

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MAACO FRANCHISING, INC., :
Plaintiff, : 09-cv-04548
v. : Philadelphia, Pennsylvania
PIERRE PHILIPPE AUGUSTIN, : March 17, 2010
et al., : 2:13 p.m.
Defendants. :

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE LOUIS H. POLLAK
UNITED STATES DISTRICT JUDGE

10 APPEARANCES:

11 For the Plaintiffs: CONSTANTINE T. FOURNARIS, Esquire
12 WIGGIN AND DANA LLP
13 Two Liberty Place
50 South 16th Street, Suite 2925
Philadelphia, PA 19102

14 ERIKA L. AMARANTE, Esquire
15 WIGGIN AND DANA LLP
16 One Century Tower
P.O. Box 1832
New Haven, CT 06508-1832

17 For the Defendants: JEFFREY D. BUKOWSKI, Esquire
18 STEVENS & LEE
19 111 N. 6th Street
P.O. Box 679
Reading, PA 19603

20 | Audio Operator: A.J. FOLLMER

21 Transcribed by: LAURA A. JIMENEZ
22 JIMENEZ REPORTING
& TRANSCRIPTION SERVICE
23 1501 Larkin Road
Boothwyn, PA 19061
Telephone: (610) 235-9046
24 Email: Laura@Jimenez-Reporting.com

25 Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

3 THE COURT: Good afternoon.

4 MR. FOURNARIS: Good afternoon, Your Honor.

5 MR. BUKOWSKI: Good afternoon, Your Honor.

6 MS. AMARANTE: Good afternoon.

7 (Pause in proceedings.)

8 THE COURT: Please sit down.

9 (Pause in proceedings.)

10 THE COURT: I'm glad you were able to find
11 your way to this courtroom, which is a courtroom that
12 I'm not familiar with. But it's fortunate that we don't
13 need a jury. I guess one could have an eight person
14 jury here.

15 Well, this afternoon we'll be addressing
16 plaintiff's motion for a preliminary injunction. And it
17 behooves us to use our time in some rigor because we
18 have a lot of work to do with relatively little time to
19 do it in. So I'll go right ahead and call on
20 plaintiff's counsel to proceed.

21 MR. FOURNARIS: Would you like brief
22 introductory remarks or would you like us to start with
23 the first witness, Your Honor?

24 THE COURT: That's really -- that's really
25 up to you. I mean, I have a general sense of what

1 you're urging. If you think there's something
2 specific --

3 MR. FOURNARIS: No. I --

4 THE COURT: -- that can be stated with
5 brevity.

6 MR. FOURNARIS: Yes. Yes, Your Honor.

7 Thank you, Your Honor, for entertaining us today and
8 making the time for us today.

9 You've read all the papers. I actually
10 think that this case has been substantially briefed.
11 We've provided proposed findings of fact and conclusions
12 of law today. This is an important case for MAACO.
13 This is an important day for MAACO. We will have
14 witnesses testifying today as to the importance of the
15 case and the fact that in a case like this and under
16 circumstances like this, MAACO simply cannot afford from
17 a system maintenance point of view to allow a franchisee
18 to do the things that Mr. Augustin has done both within
19 and outside the litigation and to get away with it.

20 And if the systems -- the MAACO system is
21 watching today, and we hope that we put on the case that
22 is compelling and leads to the entry of the requested
23 relief. We are, in fact, suffering irreparable harm,
24 and we believe that the merits are substantially tilted
25 in our favor.

1 Thank you, Your Honor.

2 THE COURT: All right. Do the defendants
3 wish to say anything?

4 MR. BUKOWSKI: Nothing at this time, Your
5 Honor.

6 THE COURT: All right. We'll go right ahead
7 and turn to -- turn to the plaintiff. Call your
8 witnesses.

9 MS. AMARANTE: Your Honor, MAACO Franchising
10 calls Tom Monaghan to the stand.

11 THOMAS FRANCIS MONAGHAN, WITNESS, SWORN.

12 COURTROOM CLERK: Please state your full
13 name, spell your last name for the record.

14 THE WITNESS: Thomas Francis Monaghan, last
15 name Monaghan, M-O-N-A-G-H-A-N.

16 THE COURT: Please sit down, Mr. Monaghan.

17 DIRECT EXAMINATION

18 BY MS. AMARANTE:

19 Q. Thank you, Mr. Monaghan. Good afternoon.

20 A. Good afternoon.

21 Q. Where do you work, Mr. Monaghan?

22 A. I work for MAACO Franchising, Incorporated, in
23 King of Prussia, Pennsylvania.

24 Q. And can you tell me generally what is the
25 business of MAACO Franchising?

1 A. We are the franchise corporate headquarters for
2 the entity known as MAACO Collision Repair and Auto
3 Painting franchises throughout the North America.

4 Q. Okay. And how long have you worked for MAACO?

5 A. Eleven years, two months.

6 Q. What is your current position with the company?

7 A. Vice President of Operations.

8 Q. Are you also familiar with a corporation named
9 MAACO Enterprises, Inc.?

10 A. I am indeed.

11 Q. What is the relationship between MAACO
12 Enterprises and MAACO Franchising?

13 A. MAACO Enterprising was the company in which
14 existed until October of 2008 as the franchisor for
15 MAACO Collision Repair and Auto Painting and was sold in
16 October of eight and became MAACO Franchising.

17 Q. Okay. And when that transaction happened, did
18 the franchise agreements that were in MAACO
19 Enterprises's name become assigned to MAACO Franchising?

20 A. Yes. All the franchise agreements, trademark,
21 operating systems, and everything wherein MAACO
22 Enterprising owned were transferred into MAACO
23 Franchising, yes.

24 Q. Okay.

25 MS. AMARANTE: And, Your Honor, I'd like to

1 mark an exhibit Plaintiff's 1, and I'm handing a copy to
2 defendants's counsel right now.

3 (Whereupon, Plaintiff's Exhibit No. 1 was
4 marked for identification.)

5 MR. BUKOWSKI: Thank you.

6 (Pause in proceedings.)

7 MR. FOURNARIS: Your Honor, may I proceed?

8 THE COURT: Yes. Are we going to find out
9 whether there still is a MAACO Enterprising?

10 MS. AMARANTE: Well, I can ask that
11 question, Your Honor, yes.

12 BY MS. AMARANTE:

13 Q. Mr. Monaghan, is there still a MAACO Enterprises,
14 Inc.?

15 A. There is not. All of its assets were sold and
16 are now under the -- under the company name of MAACO
17 Franchising.

18 Q. Okay. And is this document that's been marked --
19 do you have a copy?

20 A. I do not have a copy. Sorry.

21 Q. The document that I've offered as Plaintiff's
22 Exhibit 1 is entitled, "Assignment and Assumption of
23 Franchise Agreements." Do you see that, Mr. Monaghan?

24 A. I do.

25 Q. Okay. And is this the document through which

1 MAACO Enterprises assigned franchise agreements to make
2 MAACO Franchising?

3 A. It is indeed.

4 MS. AMARANTE: I would offer the document
5 absent objection.

6 MR. BUKOWSKI: No objection, Your Honor.

7 THE COURT: Good. All right. It's been
8 admitted.

9 (Whereupon, Plaintiff's Exhibit No. 1 was
10 admitted into evidence.)

11 BY MS. AMARANTE:

12 Q. Mr. Monaghan, how long has the MAACO brand
13 existed?

14 A. The MAACO brand was founded in 1972, so we're in
15 our 38th year of operation.

16 Q. And how many MAACO centers are there today?

17 A. There are currently 474 operating locations
18 without -- throughout North America.

19 Q. Are those locations all owned and operated by
20 franchisees?

21 A. All but six are owned and operated by us as a
22 company. The remaining are all individually owned and
23 operated by franchisees.

24 Q. And over the course of that 38 years, has MAACO
25 developed a specific operating system?

1 A. We certainly have.

2 Q. Can you describe that operating system in broad
3 strokes to the Court, please?

4 A. In a nutshell of what the operating system
5 consist it is of, it consists of the specific location
6 with specific equipment with a specific operating layout
7 in terms of both production and the sales said. It's
8 the operating trademarks of MAACO. It's a selling
9 system. It's a marketing system. It's a production
10 system. It's a training system. It's everything
11 essentially from when you open the doors in the morning
12 to when you close the doors at night have been developed
13 during that 38 years to operate the business day to day.

14 Q. Okay. And is the MAACO operating system the same
15 as that used by others in the automobile painting and
16 body repair industry?

17 A. It is not. It is extremely proprietary and the
18 way we do things is unlike any other industry, any other
19 body shop or collision repair/auto painting business in
20 the industry.

21 Q. Has MAACO developed any trade secrets that
22 accompany this unique operating system?

23 A. Clearly as a result of being unique and the way
24 we do things and how we do things and the way we sell
25 and the way we produce and our relationships with our

1 vendors, all of that is secret and proprietary, yes.

2 Q. Does MAACO own any registered trademarks?

3 A. We do. Everything related to MAACO Collision,
4 MAACO Auto Painting, MAACO Collision Repair and Auto
5 Painting, MAACO Auto Painting and Body Works, all the
6 related trademarks since they incorporate those names
7 and those services.

8 Q. How long did it take MAACO to develop the
9 operating system that it uses today?

10 A. Again, thirty-eight years of evolution. The
11 business started thirty-eight years ago. We had a
12 specific operating system that has evolved and grown
13 year after year to be more complex and even more
14 proprietary as we evolve our systems and our services
15 for our franchisees.

16 Q. And does MAACO divulge its trade secrets and
17 operating systems to just anyone?

18 A. No. We only divulge that to our franchisees they
19 have completed our franchise training program and use
20 them as a conduit of which they're the only ones that
21 have exposure to it.

22 Q. Okay.

23 MS. AMARANTE: I'm now going to offer as
24 Plaintiff's Exhibit 2 a MAACO Franchise Agreement dated
25 October 4th, 2006 --

1 THE COURT: Okay.

2 MS. AMARANTE: -- that the Augustins have
3 signed. I'm handing a copy to defense counsel and to
4 the Court and to the witness. And absent objection --

5 MS. AMARANTE: Excuse me.

6 THE COURT: Do you by any chance have two
7 copy of your exhibits so that Mr. Ramios (ph.) can have
8 one?

9 MS. AMARANTE: Absolutely, Your Honor. I
10 do.

11 | (Pause in proceedings.)

12 MR. RAMIOS: Thank you.

13 MS. AMARANTE: You're very welcome. Absent
14 objection from defense counsel, I'd offer that as a full
15 exhibit.

16 MR. BUKOWSKI: No objection, Your Honor.

17 THE COURT: Okay.

18 (Whereupon, Plaintiff's Exhibit No. 2 was
19 admitted into evidence.)

20 BY MS. AMARANTE:

21 Q. Okay. Mr. Monaghan, are you familiar with this
22 document?

23 A. I am indeed.

24 Q. And what is it?

25 A. This is the Augustins's franchise agreement that

1 they executed on October 4th of 2002 between themselves
2 and MAACO Enterprises.

3 Q. Okay. And did MAACO Enterprises assign this
4 franchise agreement to MAACO Franchising pursuant to the
5 document that we've marked as Plaintiff's Exhibit 1?

6 A. It was a deed assigned based on the assignments
7 and assumption of the franchise agreements of
8 October 21st, 2008.

9 Q. Now, I'm going to refer to you to the first two
10 whereas clauses of the franchise agreement. Do you see
11 those two clauses?

12 A. I do.

13 Q. And just quickly just to read them into the
14 record, they say, "Whereas, MAACO has accumulated
15 extensive knowledge of and experience in the automobile
16 painting and body repair business and has developed and
17 owns a unique system, 'the System', relating to the
18 establishment, development, and operation of centers
19 specializing in automobile painting and body repair
20 which may be changed, improved, and further developed by
21 MAACO from time to time."

22 Did I read that provision accurately, Mr.
23 Monaghan?

24 A. Yes.

25 Q. Okay. And then the second whereas

1 continues, "That whereas MAACO is the owner of the trade
2 name, trademark, and service mark, quote, 'MAACO Auto
3 Painting and Body Works,' end quotes, and such other
4 trade names, service names, and trademarks as are now
5 designated and may hereinafter be designated by MAACO as
6 part of the System called the proprietary marks. And
7 MAACO continues to develop, use, and control just
8 proprietary marks for the benefit and exclusive use of
9 itself and its franchisees in order to identify for the
10 public the source of services and products marketed
11 thereunder and to represent the System's high standards
12 of quality and service."

13 Did I read that accurately, Mr. Monaghan.

14 A. Yes, you did.

15 Q. Okay. And does those clauses accurately describe
16 the confidential system that MAACO reveals only to its
17 franchisees?

18 A. It does indeed in broad strokes.

19 Q. Let's turn, if you will, Mr. Monaghan, to
20 paragraph 8 of the franchise agreement which is on page
21 3 and that's entitled, "Proprietary marks." Do you see
22 that?

23 A. I do.

24 Q. And why are -- I'll spare everyone my reading it
25 into the record, but can you just explain in broad

1 strokes why this provision, section 8, is included in
2 the franchise agreement?

3 A. In short, it's recognizing the fact the
4 franchisee has the right to use our marks while he is a
5 franchisees and that he will not share or trade or have
6 others utilize or represent themselves as a MAACO in any
7 form or fashion subsequent to this franchise agreement.

8 Q. Okay. And let's turn the page and look at
9 paragraph 10, which is entitled, "Confidential
10 Information." Do you see that?

11 A. I do.

12 Q. And why is this provision in the franchise
13 agreement, Mr. Monaghan?

14 A. As we stated earlier, we have developed over
15 38 years a proprietary and secret way of doing business
16 that we only expose our franchisees to. Therefore, it
17 is implicit in our relationship with our franchisees
18 that our -- our operating secrets, our systems, our
19 knowledge, our proprietary information systems are not
20 shared with others outside the system by -- and
21 therefore, potentially putting our system in jeopardy.

22 Q. Thank you. And if you look right above section
23 10, there's 9. Paragraph 9, is "Confidential Operating
24 Manual." Do you see that, Mr. Monaghan?

25 A. I do.

1 Q. And just to draw your attention to subset B,
2 capital B, which says, "Franchisees shall at all times
3 treat the manual, any other manuals created, for or
4 approved for in the use of the operation of the
5 franchise business and the information contained therein
6 as confidential, and shall use all reasonable efforts to
7 maintain such information as secret and confidential.
8 Franchisees shall not, at any time, without MAACO's
9 prior written consent copy, duplicate, record, or
10 otherwise reproduce the foregoing materials in whole or
11 in part nor otherwise make the same available to any
12 unauthorized person."

13 Did I read that accurately.

14 A. Yes.

15 Q. Okay. And why are -- is there a specific
16 provision about the confidentiality of the operating
17 manual, Mr. Monaghan?

18 A. Again, there are eleven specific manuals related
19 to each segment of our business. They're extremely
20 proprietary. And the last thing we'd want them to do is
21 to fall into the hands of competition or those that
22 compete with us in any form or fashion. So we go out of
23 our way to very clearly explain that the confidential
24 matter of that, you know, is the property of MAACO and
25 is being loaned to the franchisee during the term of

1 their agreement with us.

2 Q. Thank you. I'm going to ask you to go backwards
3 in the agreement now to page 2. There's section 6 is
4 entitled, "Duties of Franchisee."

5 And in particular, looking at subpart A, it
6 talks about -- well, it says, "Franchisee shall acquire,
7 or lease the location at franchisee's expense and shall
8 submit the lease, if any, prior to its execution to
9 MAACO for its approval," and that goes on.

10 Why is this provision regarding the
11 franchisee's lease in the franchise agreement?

12 A. Just so there's no confusion as to the
13 responsibility of the franchisee to secure a lease on
14 their own, that they are bound to and is in no form or
15 fashion either represented, agreed upon, or that MAACO
16 Enterprises or MAACO Franchising has any responsibility
17 for that location for the responsibility of them as a
18 tenant.

19 Q. Okay. And is MAACO generally a party to the
20 lease that its franchisees sign with landlords?

21 A. We are not.

22 Q. Is it MAACO's responsibility to negotiate the
23 terms of a lease for a franchisee?

24 A. It is not.

25 Q. Who is supposed to negotiate the lease for the

1 franchisee?

2 A. It is the duty of the franchisee.

3 Q. Turning the page and still within section 6 of
4 the agreement, I'm going to draw your attention to
5 subpart J, which says, "Franchisee shall make all
6 payments required under this agreement in the manner and
7 at the time prescribed in this agreement."

8 Do you see that, Mr. Monaghan.

9 A. I do.

10 Q. And why is that provision in the franchise
11 agreement?

12 A. Again, self evident in being that that location
13 can only exist as long as the franchisee upholds his
14 obligation to his landlord. And consequently, if he's
15 unable to do so, puts that franchise at risk due to
16 being in default with his landlord on the lease
17 perspective.

18 Q. Okay. And subpart J also refers to payments
19 required under the agreement. Would that also include
20 payments required to be made to MAACO?

21 A. It is indeed. It's related to his franchise fees
22 due on a weekly basis, his advertising commitment on a
23 weekly basis, and his product and supply accounts with
24 us on a monthly basis.

25 Q. Okay. And so let's turn to section 4, which is

1 entitled, "Fees." And that's on page 2 of the franchise
2 agreement.

3 A. Okay.

4 Q. Does this provision accurately reflect the
5 various fees that a franchisee, or in this case the
6 Augustins's agreed to pay to MAACO during the course of
7 their franchise relationship?

8 THE COURT: He's still reviewing.

9 THE WITNESS: Yes, it is.

10 BY MS. AMARANTE:

11 Q. And looking at subpart A, number 2, it refers to
12 a continuing weekly royalty fee during the term of this
13 agreement in an amount equal to nine percent of the
14 gross receipts of the center. Do you see that.

15 A. I do.

16 Q. Okay. And what is that royalty fee required for?

17 A. That royalty fee is in exchange for the use of
18 our trademarks, our operating systems, our training, and
19 everything related to the MAACO brand and whereby the
20 franchisee then essentially pays us nine percent of all
21 collected monies from that location.

22 Q. Okay. And looking at subpart F under section 4,
23 there's a definition of gross receipts. Do you see
24 that, Mr. Monaghan?

25 A. I do.

1 Q. And it says, "Gross receipt as used herein shall
2 mean the amount of all cash collected or other
3 consideration received for all sales of merchandise and
4 services of any nature at or from or as a result of the
5 center, including but not limited to, sublet labor and
6 new and used replacement parts, less sales, or
7 equivalent taxes."

8 Did I read that accurately?

9 A. You did.

10 Q. Okay. And why is there a reference in here to
11 sublet labor being included as the gross receipts?

12 A. Again, just an understanding that further
13 definition of what all sales and service and
14 merchandise, that there would be no exceptions to that
15 to such things as sublet labor or parts.

16 Q. Moving forward to page 4 of the franchise
17 agreement, I'm going to draw your attention to section
18 11. And in particular, subpart B, which talks about the
19 requirement for a weekly report that the franchisee
20 shall submit to MAACO indicating what the gross receipts
21 were during the proceeding week.

22 Do you see that Mr. Monaghan?

23 A. I do.

24 Q. And why is the weekly report of gross receipts
25 required?

1 A. Again, our agreement calls for both the weekly
2 reporting and weekly payment of those fees. So
3 consequently, it just lays out that obligation of the
4 franchisee to report essentially by Tuesday of week --
5 of each week, that we get it by Friday or it's
6 postmarked by Tuesday, and we get it by Friday, and it
7 includes for the payments due relative to the gross
8 receipts from the prior week.

9 Q. Okay. And without the weekly report, does MAACO
10 know what the gross receipts would be at a particular
11 MAACO center?

12 A. We do not. We do not directly tie into that
13 their operating system. We leave it up to the
14 franchisees on the honor system to report to us using
15 our system on a weekly basis.

16 Q. Thank you. Only page 5, section 14 of the
17 franchise agreement talks about terminations by MAACO.
18 Do you see that, Mr. Monaghan?

19 A. I do.

20 Q. And does this provision summarize the grounds
21 under which MAACO can terminate the franchise agreement?

22 A. It does.

23 Q. Okay. And looking at section 15, "Obligations
24 Upon Termination Or Expiration." What are the
25 franchisee's obligation once the agreement has been

1 terminated?

2 A. Again, it is our -- our expectation that he
3 immediately cyst -- cyst -- cease and stop doing
4 business of any collision repair or auto painting
5 business whatsoever for the term of one year or
6 ten miles for any other locations.

7 Q. And I'm going to draw your attention in
8 particular to subpart B, subpart F, and subpart G. I'm
9 going to try to speed this along and just --

10 A. Uh-uh.

11 Q. -- point those three out all together.

12 Why is it that MAACO requires terminated
13 franchisees to stop using the proprietary marks and
14 return the operating manuals?

15 A. Again, I think this kind of goes to the crux of
16 the matter we have here. In our operating system, in
17 our franchise agreement with all of our franchisees
18 would hang in the balance. It allows someone to
19 essentially say I will no longer be a MAACO, and no
20 longer continue to pay your obligations but continue to
21 operate as an independent. We'd have chaos. We would
22 not have an agreement anymore. That would be egregious.
23 The concept being is that upon termination you will then
24 cease operating at all per the agreement.

25 We also talk about that any monies outstanding

1 would then be fully brought current and that whatever
2 was owed to us, per paragraph F, would then be satisfied
3 as well in agreement with that termination.

4 Q. Okay. Thank you. And does the franchise
5 agreement also contain a post termination covenant not
6 to compete?

7 A. It does indeed.

8 Q. Okay. And let's take a look at section 17,
9 subpart C, which appears at the top of page 7. Is that
10 the post termination covenant not to compete?

11 A. It is.

12 Q. Okay. And why does MAACO include that provision
13 in the agreement?

14 A. Again, I think this is where we get to the crux
15 of the matter here. Is it is critical for our system
16 strength and that of our existing franchisees that
17 someone who has our proprietary operating system, has
18 our customer base, has our manuals, has our information
19 system, no longer utilize that for their own benefit
20 without having the obligations of the -- of the
21 financial obligations and the competing obligations to
22 other MAACO centers in their market or in their country.

23 So, yes, that's, you know, part of the covenant
24 and what our expectations are.

25 Q. Okay. To your knowledge, has MAACO ever entered

1 into a franchise agreement without a covenant not to
2 compete?

3 A. Absolutely not.

4 Q. And why is the covenant so important to MAACO?

5 A. It's important to MAACO and all franchise
6 organizations. Here, I think we're talking about a
7 precedent setting situation.

8 This is a covenant that allows franchisors and
9 franchisees to understand that what they have learned is
10 proprietary and the expectation. And when that
11 relationship is over, you can no longer benefit from the
12 knowledge, the information, the training, the trademark,
13 that was given to you during the term of your franchise
14 agreement.

15 If you chose to do so, you have franchise chaos.
16 Guys would grab the system, learn from it, and in a week
17 or seven years later -- in this case -- say I'm just
18 going to stop paying you and go use everything you've
19 learned on your own and be in competition with you. We
20 would no longer have a franchise without that covenant.

21 Q. And the covenant contains a radius of ten miles
22 around the franchisee's MAACO center or any other MAACO
23 center. Can you tell me what is that ten-mile radius
24 based upon?

25 A. Again, over years of research, we have done pin

1 studies and other research that shows us that a location
2 can draw customers, both retail and trade customers,
3 from up to ten miles away. Therefore, we still give
4 this guy an opportunity to go beyond ten miles, but we
5 don't want him competing within that ten-mile circle of
6 an existing MAACO or any proposed MAACO location that
7 may, in turn, jeopardize that location or the brand
8 again in that marketplace.

9 Q. Okay. And in coming up with the ten miles, has
10 MAACO conducted studies regarding the radius from which
11 a center will draw customers?

12 A. We have.

13 Q. Okay. The covenant also applies for a period of
14 one year. Can you explain how that term of the covenant
15 was decided upon?

16 A. I can't say specifically. I believe that what
17 we've done there is do what's reasonable and not try to
18 prevent a ex-franchisee from every being a part to the
19 business, but at least give the brand and the existing
20 franchisees enough time to get up and running and gain
21 any of the customer base back within the system rather
22 than have it compete up to that time period for one
23 year.

24 Q. Okay.

25 MS. AMARANTE: I'm now going to offer as

1 Plaintiff's Exhibit 3 a MAACO-Polaris 2000 software
2 license agreement. And I have two copies for the Court
3 and the witness.

4 (Pause in proceedings.)

5 BY MS. AMARANTE:

6 Q. Is this document familiar to you?

7 A. It is.

8 Q. Okay. What is it?

9 A. It is our proprietary software hereby called
10 "Polaris" in which we agree to loan the use of that
11 software to a franchisee for the term of its franchise
12 agreement.

13 Q. Okay. And is this the software license agreement
14 that Mr. and Mrs. Augustin signed with MAACO?

15 A. It is indeed. This agreement specifically was
16 dated October 4th, 2002, by the Augustins.

17 Q. Okay. And was this agreement also assigned by
18 MAACO Enterprises, Inc. to MAACO Franchising, Inc., when
19 the transaction happened in 2008?

20 A. Yes, it was.

21 Q. What kind of information is generated and
22 contained in Polaris?

23 A. Again, this is a proprietary secret software in
24 which it is the way we interface with our customers, and
25 the software that they receive and the invoices and

1 repair orders that a customer would receive. So our
2 selling system is built into the software, our
3 information system in terms of how we look at profit and
4 loss of our business and all of that, the production in
5 the way we produce our work in the back of the shop in
6 terms of prioritizing which work over it. It
7 essentially is our operating system memorialized in a
8 software program that's licensed to each of our
9 franchisees.

10 Q. Okay. And turning to section 7 of the Polaris
11 agreement --

12 A. Uh-uh.

13 Q. -- again entitled, "Confidential Information."

14 Why is it important to have this separate
15 agreement indicating that Polaris is also confidential
16 to the MAACO system?

17 A. Again, it's part and parcel to our operating
18 system, the way we do business, which is significantly
19 different than the industry. It needs to be outlined
20 again that this should not be shared and is only to be
21 used by the franchisee or his agents while representing
22 themselves as a MAACO franchise.

23 Q. Okay. Mr. Monaghan, are you personally familiar
24 with the Augustins and their former MAACO center?

25 A. I am.

1 Q. When the Augustins's signed their franchise
2 agreement in October 2002, did MAACO provide them with
3 any training?

4 A. We did indeed.

5 MS. AMARANTE: And I'm going to offer as
6 Plaintiff's 4 some training -- a document entitled,
7 "Training Class Memo." And I'm handing it to defense
8 counsel right now.

9 (Pause in proceedings.)

10 MS. AMARANTE: Absent objection, Your Honor,
11 I'm beginning to move both Plaintiff's Exhibit 3 and
12 Plaintiff's Exhibit 4 as full exhibits at this time.

13 MR. BUKOWSKI: No objection.

14 THE COURT: Good. It will be admitted.

15 (Whereupon, Plaintiff's Exhibit Nos. 3 and 4
16 were admitted into evidence.)

17 BY MS. AMARANTE:

18 Q. Mr. Monaghan, are you familiar with this document
19 marked as Plaintiff's 4?

20 A. I am.

21 Q. And are these documents kept as part of MAACO's
22 business records?

23 A. They are indeed.

24 Q. What does this document show?

25 A. This is documentation that in September of 2002,

1 specifically from September 16th until October 8th of
2 2002, that Philippe Augustin was flown to King of
3 Prussia, Pennsylvania, to complete in our franchise
4 training program for the three and a half weeks at our
5 corporate office.

6 Q. Okay. And what kinds of topics are covered
7 during that initial training?

8 A. Again, it's essentially your -- I'll call it your
9 MAACO MBA. It is the exposure to our operating system
10 and all the proprietary systems and procedures therein,
11 from how the store's laid out again, to how to sell at
12 our business, to our advertising, to our production, to
13 our Polaris training, to our information system. It is
14 the exposure to essentially behind the curtain of MAACO
15 and our operating system.

16 Q. Okay. And does the training include information
17 about how to properly calculate the royalties that are
18 due to MAACO?

19 A. It does indeed.

20 Q. Okay. Did Mr. Augustin receive access to MAACO's
21 unique operating system during this initial training?

22 A. Yes. He would have had exposure to it and would
23 have walked away at the end of the class with all of the
24 manuals that he was exposed to there, and consequently,
25 walks away with a Polaris software disc and all the

1 manuals relating to our operating system upon the
2 completion of this said training program.

3 Q. Okay.

4 MS. AMARANTE: I'm not going to offer as
5 Plaintiff's Exhibit 5 a document called, "Manual
6 Receipt." And I'm handing a copy to defense counsel.

7 (Pause in proceedings.)

8 MS. AMARANTE: Absent objection, I'd like to
9 offer that as a full exhibit, Plaintiff's Exhibit 5.

10 MR. BUKOWSKI: No objection.

11 THE COURT: All right.

12 (Whereupon, Plaintiff's Exhibit No. 5 was
13 admitted into evidence.)

14 BY MS. AMARANTE:

15 Q. Mr. Monaghan, is this document familiar to you?

16 A. It is indeed.

17 Q. Okay. And what is it?

18 A. It is a signed manual receipt by Philippe that on
19 October 1st of two thousand and second, that he received
20 eleven of our confidential operating manuals and would
21 understand that this is extremely important information
22 and that the -- that this information is owned by MAACO,
23 forbidden to be shared by anyone else and have every
24 expectation that it be returned to us undamaged at the
25 end, and that any loss or anything that would incur to

1 us is to us monumental towards our franchise agreement
2 and implied in the -- the -- the value of these manuals.

3 Q. Okay. And at the bottom of the document, do you
4 recognize the signature on the page?

5 A. Again, without being a handwriting expert, it
6 certainly is consistent with the handwriting of Mr.
7 Augustin both on our franchise agreement, on the Polaris
8 software agreement, that was priorly introduced.

9 Q. Okay. And in the first sentence of the -- the
10 first paragraph of the manual receipt, it talks about
11 the manuals being on loan to Mr. Augustin. Why is it
12 phrased that way?

13 A. Again, these operating manuals, in our opinion,
14 are extremely important to our system and, therefore,
15 are on loan to our franchisees while they operate as a
16 MAACO under our agreement and would need to be returned
17 upon that termination or other agreement with us.

18 Q. Okay. And the last part of the second paragraph
19 of text starting with, "Their loss will cause
20 substantial damage to MAACO" --

21 A. Uh-uh.

22 Q. -- "although the amount of such a loss would be
23 incalculable with any degree of certainty."

24 Why is that language included on the manual
25 receipt?

1 A. Again, to recognize the seriousness of this
2 information. In the hands, it could be extremely
3 dangerous to us as a company to allow our manuals, our
4 way of doing business, to become common knowledge and
5 common practice. It is what differentiates us from the
6 industry. And consequently, if it became public domain
7 information, it would put us at serious risk.

8 Q. Why are there eleven separate manuals that are
9 given to the franchisees in the MAACO system?

10 A. Because it would be one gigantic manual if we put
11 it into one. This is, you know, a volume of
12 information, you know, that probably stands eleven
13 binders and three feet in girth in terms of all the
14 information.

15 Q. Okay.

16 MS. AMARANTE: I'm now going to offer as
17 Plaintiff's Exhibit 6 a document that starts at the top,
18 "Maintenance Manual."

19 THE WITNESS: Okay.

20 MS. AMARANTE: And I'm handing that to
21 defense counsel.

22 (Pause in proceedings.)

23 BY MS. AMARANTE:

24 Q. Mr. Monaghan, do you recognize this document?

25 A. I do indeed.

1 Q. Okay. And what is it?

2 A. It is a portion of a manual that was given to our
3 franchisees related to this specific piece, or at least
4 the beginning of it is related to the maintenance of the
5 equipment and the location in order to be successful and
6 to maintain good working equipment.

7 Q. And looking through, does this document include a
8 table of contents for each of the eleven manual that the
9 Augustins received?

10 A. It does indeed.

11 If you to through, we see the first part is the
12 maintenance manual. As we go through that, it's the
13 health and safety piece, our management information
14 piece. What you're looking at here is, you know, the
15 sales and marketing piece.

16 This is the introduction to each of the manuals
17 in which Philippe would have received upon the
18 completion of his class that he dated he received on
19 October 1st of 2002.

20 MS. AMARANTE: Absent objection, I'd like to
21 offer this as a full exhibit, Plaintiff's Exhibit 6.

22 THE COURT: Any objection?

23 MR. BUKOWSKI: No, Your Honor.

24 THE COURT: Good. All right.

25 (Whereupon, Plaintiff's Exhibit No. 6 was

1 admitted into evidence.)

2 BY MS. AMARANTE:

3 Q. Mr. Monaghan, do any of these manuals include
4 information or forms regarding the calculation of
5 royalties due to MAACO?

6 A. Yes, they do. If you were to turn -- and I'm not
7 quite sure which page it would be. It's about 15,
8 20 pages in. It says, "Management Information System."

9 If you look at the table of contents there, it
10 clearly outlines what the Friday night weekly close
11 would look like and the sequential MIS track and all of
12 the exhibits and forms there -- thereto on page 2 of
13 that. It would need to be completed in order to
14 calculate accurately your royalties due each week.

15 Q. Okay. So, for example, does the manual include
16 information on how a franchisee might receive a royalty
17 credit if a customer obtained an estimate but didn't
18 return for the actual work on their vehicle?

A. I'm sorry. I don't understand the question.

20 Q. Does this Management Information System Manual
21 and the forms attached include information about whether
22 or not MAACO would calculate royalties on an estimate
23 where the customer didn't actually return and pay for
24 the work?

25 A. Indeed it would. Under the exhibits and forms,

1 you know, it goes through each of them explaining by
2 definition. Under Exhibit Number 11, number 2 is the
3 repair order. It would have outlined in that chapter
4 what the repair order is and your obligations.

5 Further down you look at Cash Receipts, in
6 Exhibit Number 8 there. And its definition being that
7 that's what the royalties would be calculated from and
8 how that's generated is all outlined in this manual.

9 Q. Okay. And does the manual also include
10 information regarding the calculation of royalties due
11 on sublet work?

12 A. Indeed it would. Again, by the definition under
13 the cash receipts and that under the franchise agreement
14 it's -- it's -- its royalties are subject to all revenue
15 generated on the location without exception.

16 Q. Okay. Can you explain in simple terms what
17 sublet work means? Why would a MAACO center be doing
18 sublet work?

19 A. Certainly, that would -- an example may mean the
20 replacement or the outsourcing of labor in which you are
21 unable to do in-house. An example of that may be a
22 windshield repair that you would bring in a glass
23 specialist to replace that windshield on a customer's
24 car for them, and then consequently pay that -- that
25 windshield repair supplier directly and charge the

1 customer to have -- to pay for it. Rather than allowing
2 those two to act together, we would act as intermediary
3 between the two. And in most cases, marking up the
4 sales in order to make some profit on that and then
5 passing it onto the customer.

6 Q. Okay. And under the franchise agreement and as
7 detailed in the operations manuals, the franchisee is
8 required to pay MAACO a royalty fee on that sublet work,
9 correct?

10 A. Without a doubt.

11 Q. Once Mr. Augustin completed the initial three and
12 a half week training and received his eleven operating
13 manuals, did MAACO provide him with any additional
14 support?

15 A. A significant amount of additional support.
16 During that first year of operation, there were six-man
17 weeks. We're talking about 42 days of people in his
18 location to train him and his staff on our operating
19 system. And then subsequently each year there was
20 additional incenter training, regional marketing
21 meetings training, incenter inspections, national
22 conventions, on and on and on.

23 So yes, there was a significant amount of
24 resources to go into the support of specifically their
25 locations.

1 Q. Okay. And when you say "man weeks" --

2 A. Uh-uh.

3 Q. -- can you explain what that means? Did MAACO
4 actually send a person?

5 A. It would literally mean that one of our
6 representatives would fly in either on Sunday night or
7 Monday morning and would remain at that location through
8 the duration of the week: Monday, Tuesday, Wednesday,
9 Thursday, Friday. So a man week would mean that we had
10 an employee of MAACO's operations department, a person
11 that would have report to me, in that location for an
12 entire week of business for training purposes.

13 So during that time period there were, you know,
14 weeks and weeks and weeks of incenter support given to
15 this location.

16 Q. And I think you said that the Augustins's
17 received six-man weeks of support?

18 A. Just during the first six months of operation,
19 yes.

20 Q. And is that amount of support typical for a new
21 franchisee in the system?

22 A. I would say it's a little on the high side.
23 We -- in our agreement with our franchisees is typically
24 they will get up to four weeks during that time period.
25 However, if we run into a situation where we have a

1 franchisee struggling to get the system and struggling
2 to understand our operating system, we will continue to
3 invest more support in that location to help them try to
4 get it.

5 Q. And after the fist year of the Augustins's
6 operation, did MAACO continue to provide support and
7 training to the Augustins?

8 A. Indeed. Right up until the proverbial bitter
9 end. It then was clearly not as intensive where we
10 would have people in there for weeks and weeks. It
11 would typically be someone coming in for a half a day or
12 a full day of training. It may also include for a
13 meeting within the marketplace where the franchisee or
14 salespeople or production manager would come to do a
15 meeting with one of our people for a training exercises
16 in the evening.

17 There are both regional conferences every other
18 spring and there's national conferences each year.
19 They're all available for Philippe to continue to
20 operate and to learn more about our system from a
21 support standpoint.

22 Q. Does MAACO also provide its franchisees with any
23 publications?

24 A. We do. There are numerous publications. On a
25 weekly basis our franchisees receive which is a

1 proprietary called our paint line. That is a -- a -- a
2 list of every single franchisee in the system and their
3 reported revenues and cars and leads and a lot of
4 proprietary information on all of the systems on both a
5 regional and national basis that share every week with
6 each of the franchisee so that they can measure
7 themselves up against their peers within the marketplace
8 or within the region or within the country.

9 In addition to that, we have monthly newsletters
10 called the Quick Connect that give them continuing
11 education on what's going on in the business and updates
12 on all the things going on in MAACO on a national basis.
13 We have an intranet site with a site only accessible to
14 our franchisees called the MAACO Forum, and franchisees
15 were encouraged to go on there at their -- at their own
16 time to continue to update themselves and the library of
17 information that would be available to them to operate
18 the business.

19 Q. And what kind of information is available on that
20 library on the intranet?

21 A. That is a significant amount. It is again almost
22 like -- it is representative. It's a list of all of our
23 national accounts. It's a list of every manual on that
24 you've -- we've shown here. There's an electronic
25 version in which a franchisee can grab pieces and update

1 when necessary when there's changes to what they might
2 have received in training. There are any of our new
3 related procedures or systems or advertising campaigns
4 or initiatives relating to the company. It is all
5 things MAACO.

6 Q. Okay. And during the time that they operated
7 their MAACO center, did the Augustins have access to all
8 of these publications and the intranet that MAACO hosts
9 for its franchisees?

10 A. Indeed they did.

11 Q. Can franchisees also e-mail or call MAACO
12 headquarters if they have a question or need additional
13 training and support?

14 A. Absolutely.

15 Q. To your knowledge, did the Augustins ever contact
16 MAACO to say they needed more training or support?

17 A. Again, they would have been assigned a regional
18 operations director, and I think you've going to speak
19 to him shortly, Mr. Doug Engle, who's here with us. He
20 would have been their direct conduit to those.

21 I personally was never called and asked for any
22 additional support or anything of that nature by them.

23 Q. Did you personally ever visit the Augustins's
24 former MAACO center?

25 A. I did indeed.

1 Q. When did that occur?

2 A. Gosh. I apologize for not knowing the exact
3 date. It was a few years ago in the spring. We were
4 doing a spring meeting in the marketplace and myself and
5 a prior employee visited all the MAACOs in the
6 marketplace to get a sense of how the business was being
7 run before we went in and did a weekend-long training
8 exercise with all the franchisees and their key
9 employees.

10 Q. And when you visited the Augustins's former MAACO
11 center, what did you observe during that visit?

12 A. What we observed is a significant disconnect from
13 our operating system in a lot of ways. We saw things
14 that were not being done properly from how we were
15 selling to your customers, to how the work was being
16 produced, to the quality standards of the work that was
17 being produced.

18 Q. Did the Augustins's MAACO center receive any
19 customer complaints that you're aware of?

20 A. An excessive amount.

21 Q. Do you remember anything specific about those
22 complaints?

23 A. We do. Again, we have standards of both customer
24 service inquiries. All of our customers are asked to
25 fill out a warranty card that registers their

1 satisfaction with that experience. They're also given a
2 receipt at the end of that job that if they're unable or
3 un -- un -- if they're unsatisfied to call into our
4 customer complaint department that we -- that we man at
5 our King of Prussia office.

6 Specifically, to this location during the time
7 period you were talking about approximately one customer
8 for every forty-some customers would call in complaining
9 about their experiences being a negative experience
10 either due to the service or the quality rendered at
11 that location.

12 MS. AMARANTE: I'm now going to mark as
13 Plaintiff's 7 a document entitled, "Notice of
14 Termination of Franchise Agreement." I'm going to offer
15 this as 7.

16 (Whereupon, Plaintiff's Exhibit No. 7 was
17 marked for identification.)

18 BY MS. AMARANTE:

19 Q. Are you familiar with this document?

20 A. Yes, I am.

21 Q. Okay. And what is this document?

22 A. This is the notice of termination that was sent
23 to the Augustins on April 9th of 2009.

24 Q. And what was the reason for the termination of
25 the franchise agreement?

1 A. The inability of our franchisee, in this case, to
2 cure the default that was given to them on December 3rd
3 of 2008.

4 Q. Okay. And turning to the second page of
5 Plaintiff's Exhibit 7, you'll see that there are some
6 figures at the bottom.

7 A. Yes.

8 Q. Can you tell me according to the termination
9 notice, how much money did the Augustins owe MAACO at
10 that point in time?

11 A. Again, based on the information that was
12 submitted by them, and there were some missing reports
13 and other things so this is not in total. But based on
14 what we knew, the Augustins owed us in excess of \$93,000
15 at the time of this termination.

16 Q. Okay. And when did the termination of the
17 franchise agreement take effect?

18 A. Well, we were asking for them to be terminated
19 effective immediately on October -- on April 9th of
20 2009. But implicit in that is their compliance with our
21 post termination obligations.

22 Q. Are you aware of any issues that the Augustins
23 were having with their landlord at or about the time the
24 franchise agreement was terminated?

25 A. We were. We had been notified a couple of times

1 throughout the seven years and up until this time
2 period. The Augustins were also in default with their
3 landlord in terms of that you are lease obligations.

4 Q. Okay.

5 MS. AMARANTE: And I'm going to at this time
6 offer, absent objection, the notice of termination,
7 Plaintiff's Exhibit 7 as a full exhibit.

8 MR. BUKOWSKI: No objection.

9 (Whereupon, Plaintiff's Exhibit No. 7 was
10 admitted into evidence.)

11 MS. AMARANTE: And I am also going to turn
12 to an exhibit that's entitled, "Final Judgment," and
13 offer that as Plaintiff's 8.

14 (Pause in proceedings.)

15 BY MS. AMARANTE:

16 Q. Are you familiar with this document, Mr.
17 Monaghan?

18 A. I am.

19 Q. Okay. And what is it?

20 A. This is a judgment entered on behalf of the
21 landlord, Thomas David, against the Augustins in
22 reference to their default on their lease agreement with
23 the landlord.

24 Q. And is this with respect to the landlord of the
25 former MAACO center at 804 Old Dixie Highway?

1 A. It is indeed.

2 Q. And in the first paragraph of that final
3 judgment, there's a reference to a stipulation for
4 payment dated March 10th, 2009. Do you see that, Mr.
5 Monaghan?

6 A. (No response.)

7 Q. The second line of the --

8 A. Yes, I do.

9 Q. Okay. March 10th, 2009, is that approximately a
10 month before the franchise agreement was terminated?

11 A. Indeed, it was. It was while we were still in
12 default with our franchisee, he had this judgment filed
13 against him for -- in the sum of excess of \$43,000.

14 Q. And when a franchisee fails to pay a landlord and
15 winds up getting sued for nonpayment, do those actions
16 have an impact on the MAACO brand?

17 A. Clearly, they do in numerous ways. The first and
18 foremost would be if he's unable to maintain his
19 occupancy of that location, our franchise agreement is
20 put in jeopardy and we would no longer have an operating
21 center at that location as a result of his inability to
22 pay his rent.

23 So, therefore, you know, our expectation of
24 receiving any future royalties and fees at that location
25 are clearly put in jeopardy.

1 MS. AMARANTE: Absent objection I'm going to
2 move to admit Plaintiff's Exhibit 8 as a full exhibit at
3 this time.

4 MR. BUKOWSKI: No objection, Your Honor.

5 THE COURT: Go ahead.

6 (Whereupon, Plaintiff's Exhibit No. 8 was
7 admitted into evidence.)

8 MS. AMARANTE: And as a bit of clean up, I'm
9 told that I didn't do that with Exhibit 6 yet, either.
10 So absent objection, I'll also move to admit Plaintiff's
11 Exhibit 6 as a full exhibit.

12 MR. BUKOWSKI: No objection.

13 THE COURT: Exhibit 6 will be received.

14 MS. AMARANTE: Thank you, Your Honor.

15 (Whereupon, Plaintiff's Exhibit No. 6 was
16 admitted into evidence.)

17 BY MS. AMARANTE:

18 Q. When the Augustins's franchise agreement was
19 terminated in April 2009, did the Augustins stop
20 operating a painting and auto body repair shop?

21 A. They have yet to stop operating an auto repair
22 and body shop of any means. No, they did not.

23 Q. Okay. Did they continue to operate at the same
24 location as their former MAACO center for a period of
25 time?

1 A. They did. They continued to operate at that
2 specific location until the end of June.

3 Q. Okay.

4 A. And then moved a mere 900 feet away to another
5 location and continued to operate in perpetuity since
6 then.

7 Q. Okay. When the franchise agreement terminated,
8 did the Augustins return the operations manuals or any
9 other materials that they received over the course of
10 their franchise relationship?

11 A. They returned nothing.

12 Q. Did they return the Polaris software to MAACO?

13 A. No.

14 Q. And did they stop using the MAACO name and
15 operating system when the franchise agreement was
16 terminated?

17 A. No. They continued to represent themselves as
18 MAACO.

19 THE COURT: Can you say a little more about
20 what you mean about continued to operate themselves
21 through MAACO?

22 THE WITNESS: Well, in through -- they
23 continued to be in that specific Old Dixie Highway
24 location, Judge, until the end of June still with MAACO
25 signage, still with MAACO paperwork, still with

1 everything related to our operating system.

2 When they moved down the street, they still
3 represented themselves as formerly MAACO, and even
4 represented themselves to our vendors as MAACO to
5 benefit from our national contacts in order to buy
6 supplies and products and parts at the discounted rate
7 that we've negotiated as a result of our economics of
8 470 locations. So they've always represented themselves
9 as MAACO or formerly as MAACO up until very recently.

10 MS. AMARANTE: I am going to offer as
11 Plaintiff's 9 a document that's an invoice that has
12 "LKQ" at the top.

13 (Pause in proceedings.)

14 MS. AMARANTE: Okay. So this is being
15 offered as Plaintiff's 9.

16 BY MS. AMARANTE:

17 Q. Mr. Monaghan, do you recognize this document?

18 A. I do.

19 Q. And what is it?

20 A. This is an invoice from one of our vendors called
21 LKQ who is the reseller of automobile body parts to our
22 franchisees and others in the industry.

23 Q. Okay. And does MAACO have an agreement with LKQ?

24 A. We do. We have a national agreement with them in
25 terms of a part discount that they supply to all of our

1 franchisees that is considerably better than one would
2 receive if they were in business without the MAACO
3 brand.

4 Q. Okay. And do you see or the left side in the
5 "sold to" box --

6 A. I do.

7 Q. -- it says, "MAACO of Lake Park with a 1009
8 Newman Road address; do you see that?

9 A. I do.

10 Q. Has there every been a MAACO center located at
11 1009 Newman Road in Lake Park?

12 A. Well, that's a mess -- it's kind of an issue of
13 dispute. It's clearly not a licensed location, but it's
14 one in which the Augustins continued to operate and
15 represent themselves as MAACO at the location that's a
16 mere, you know, thousand feet away from the MAACO that
17 they abandoned on Old Dixie Highway.

18 Q. Okay. And looking down at the "received" line
19 toward the bottom of the invoice?

20 A. Uh-uh.

21 Q. Can you make out who's signature is on the
22 document?

23 A. Again, it's -- it seems to be completely
24 consistent with every other signature I've seen for
25 defendant, Philippe Augustin.

1 Q. And going up to the right hand side of the
2 invoice there's shipping date and date ordered; do you
3 see those dates?

4 A. I do indeed.

5 Q. And the date is September 25th, 2009; is that
6 correct?

7 A. It is.

8 Q. Okay.

9 THE COURT: I'm sorry. What was the date?

10 MS. AMARANTE: September 25th, 2009, Your
11 Honor.

12 BY MS. AMARANTE:

13 Q. And just to repeat, when was the Augustins's
14 franchise agreement terminated?

15 A. Again, the agreement was terminated in April of
16 2009.

17 Q. So that would be five months before Mr. Augustin
18 placed this order with LKQ using the MAACO name?

19 A. Five plus months, yes.

20 Q. And did the Augustins receive any benefit from
21 using the MAACO name on this order form?

22 A. They certainly would have received our associated
23 MAACO discount consequently saving them money or making
24 them more money on that part as a result of using their
25 name as MAACO in purchasing of this part and delivering

1 it to their said location.

2 MS. AMARANTE: Your Honor, I move for
3 Plaintiff's Exhibit 9 to be a full exhibit at this time
4 absent no objection.

5 THE COURT: All right.

6 MR. BUKOWSKI: No objection, Your Honor.

7 (Whereupon, Plaintiff's Exhibit No. 9 was
8 admitted into evidence.)

9 MS. AMARANTE: And I'm now going to mark an
10 exhibit, Plaintiff's Exhibit 10, which has a Palm Beach
11 Auto business card at the top.

12 (Whereupon, Plaintiff's Exhibit No. 10 was
13 marked for identification.)

14 BY MS. AMARANTE:

15 Q. Have you seen this document before?

16 A. I have.

17 Q. Okay. And turning to the second page of the
18 document, do you recognize this form?

19 A. I do indeed. This is a proprietary repair order
20 for MAACO Collision Repair and Auto Painting. For this
21 specific one, it was generated by the location, the Lake
22 Park on Old Dixie Highway on July 2nd of 2009.

23 Q. Okay. And is July 2nd, 2009, also after the
24 Augustins's franchise agreement was terminated?

25 A. It is both after their franchise agreement was

1 terminated and after their fact of vacating the premises
2 at that address.

3 THE COURT: I'm sorry. Where in -- where
4 down are we? What page are we on?

5 MS. AMARANTE: The second page of
6 Plaintiff's Exhibit 10, Your Honor, at the bottom, the
7 very last line, it says, "Date, 7/02/2009."

8 THE WITNESS: That's right there in your
9 hand, Your Honor. Nope. The one in your left hand.

10 MS. AMARANTE: It's the second page of the
11 exhibit.

12 THE WITNESS: That. To the very bottom of
13 that. You'll see the date.

14 THE COURT: 7/02/2009.

15 THE WITNESS: And then if you look at --

16 MS. AMARANTE: Yes.

17 THE WITNESS: And to the top left is the
18 address.

19 THE COURT: Thank you.

20 BY MS. AMARANTE:

21 Q. And, Mr. Monaghan, you testified that this form
22 is created from the Polaris software --

23 A. Yeah. The only way --

24 Q. -- and it's proprietary to --

25 A. -- this or anything like this would be generated

1 is by our proprietary management information software
2 system called Polaris.

3 Q. And in turning to the first page of the document
4 at the top there's a Palm Beach Painting and Auto
5 Collision card; is that correct?

6 A. There is.

7 Q. Okay. And it looks as though the fax is being
8 sent to an insurance company; is that correct?

9 A. It is without a doubt a fax being sent from Palm
10 Beach Auto Painting by a Jerome Dear to State Farm
11 Insurance representing this specific repair being done
12 by them and authorization for payment and around that.

13 Q. And based on those documents, does it appear to
14 you as though Palm Beach Auto is affiliated somehow with
15 MAACO?

16 A. It is directly affiliated. It's usually in our
17 repair order with our customer and representing
18 themselves as such to an insurance company, which is
19 extremely dangerous from our prospective to allow,
20 again, someone to continue to operate and represent
21 themselves as a MAACO to one of our major clients, being
22 a State Farm Insurance Company.

23 MS. AMARANTE: I'd like to move for
24 Plaintiff's Exhibit 10 to be a full exhibit, Your Honor,
25 absent objection.

1 MR. BUKOWSKI: No objection, Your Honor.

2 THE COURT: Fine.

3 (Whereupon, Plaintiff's Exhibit No. 10 was
4 admitted into evidence.)

5 BY MS. AMARANTE:

6 Q. Mr. Monaghan, I'll also asked, on Plaintiff's
7 Exhibit 10, when did you first see these documents?

8 A. A day or two before last week while we were
9 preparing for this.

10 Q. And do you know why it is that you didn't see
11 documents like this before last week?

12 A. Clearly, they were being utilized by the
13 Augustins behind -- they wouldn't want us to see that
14 they're representing themselves as a MAACO, utilizing
15 our name for the purposes of gaining customers,
16 utilizing our names in the purpose of gaining the
17 benefit of national account buying supplies and national
18 account vendor relationships and national account
19 customer relationships.

20 You know, this is a smoking gun as far as I'm
21 concerned. So why I've never seen it is because it was
22 clearly not being shared with us. It was being done and
23 utilized behind our backs.

24 MS. AMARANTE: I'm now going to offer as
25 Plaintiff's 11 a copy of the defendants's joint answer

1 and counter claim dated February 24th, 2010.

2 BY MS. AMARANTE:

3 Q. Turning to paragraph 41 -- well, actually, I'm
4 sorry. I'll give you a page number. It is on page 22
5 of the document numbered paragraph 41.

6 (Pause in proceedings.)

7 BY MS. AMARANTE:

8 Q. And there's an allegation here in paragraph 41
9 that MAACO failed to purchase the assets of the center
10 from the Augustins in order to obtain an assignments of
11 the Augustins's lease as required by paragraph 16(a) of
12 the franchise agreement. Does paragraph 16(a) of the
13 franchise agreement require MAACO to purchase the assets
14 of the Augustins's center after termination of the
15 agreement?

16 MR. BUKOWSKI: Objection; calls for a legal
17 conclusion.

18 THE COURT: Sustained.

19 BY MS. AMARANTE:

20 Q. Mr. Monaghan, I'm going to ask you to look at
21 Plaintiff's Exhibit 2, which is the franchise agreement.

22 A. (Witness complies.)

23 Q. And --

24 THE COURT: Hold on a moment. I'm making my
25 way through the exhibits.

1 MS. AMARANTE: I'm sorry.

2 (Pause in proceedings.)

3 THE COURT: You've given so much exciting
4 reading material. It's hard to stop. Very good.

5 Exhibit 2.

6 BY MS. AMARANTE:

7 Q. Exhibit 2, and I'll ask you to look at paragraph
8 16(a), Mr. Monaghan. And I'll actually read it for you.

9 "Upon termination or expiration of this agreement,
10 MAACO shall have the right for a period of 60 days
11 commencing on the date of termination or expiration to
12 purchase from franchisee the assets of the center and
13 obtain an assignment of franchisee's lease for the
14 premises of the center."

15 Do you see that?

16 A. I do.

17 Q. Okay. And in your experience during your time
18 with MAACO, has MAACO always purchased a franchisee's
19 assets and obtained -- when obtaining an assignment of a
20 lease?

21 A. No, we have not. Again, that's our definition of
22 an option or a right, not a requirement.

23 Q. And turning back to page 2 of that document --
24 excuse me.

25 THE COURT: Which document? Two or --

1 MS. AMARANTE: Plaintiff's 2, yes. Excuse
2 me. I'm sorry, Your Honor.

3 THE COURT: It's all right.

4 MS. AMARANTE: We're still in Plaintiff's
5 Exhibit 2, and I'm asking the witness to turn to page 2
6 looking at section 6A(4), which talks about the leasing.

7 THE COURT: Okay.

8 BY MS. AMARANTE:

9 Q. Are you there, Mr. Monaghan?

10 A. I am.

11 Q. And I'll read that. "MAACO shall have the right,
12 at MAACO's election, to receive an assignment of the
13 leasehold interest upon termination or expiration of
14 this agreement."

15 Do you see that?

16 A. I do.

17 Q. And that provision doesn't require MAACO to
18 purchase any assets in order to receive that assignment
19 of the leasehold interest, correct?

20 A. Again, we shall have the right at our election,
21 not required to do so.

22 Q. Was MAACO able to place a new franchisee at the
23 Augustins's former location?

24 A. We were.

25 Q. Who is that franchisee?

1 A. David Stefan.

2 Q. And do you know, when did he open for business?

3 A. He opened in late July of 2009.

4 (Pause in proceedings.)

5 MS. AMARANTE: I now have a document that
6 I'm going to offer as Plaintiff's Exhibit 12.

7 (Pause in proceedings.)

8 BY MS. AMARANTE:

9 Q. Is this document familiar to you, Mr. Monaghan?

10 A. It is.

11 Q. Okay. What is it?

12 A. It is a map profile of the locations within the
13 DMA area of Lake Park, Florida.

14 Q. Okay.

15 A. Each of the X's represents a MAACO location in
16 that market.

17 Q. Okay. And who created this map?

18 A. This was created by the MAACO -- our real estate
19 department. By us.

20 Q. And I'm going to ask you to look --

21 MS. AMARANTE: Well, first of all, absent
22 objection, I'm going to move to admit Plaintiff's
23 Exhibit 12 as a full exhibit.

24 MR. BUKOWSKI: I don't have an objection.

25 (Whereupon, Plaintiff's Exhibit No. 12 was

admitted into evidence.)

2 BY MS. AMARANTE:

3 Q. So I'm going to now ask you to look at Lake Park,
4 which is approximately in the middle of the map, Mr.
5 Monaghan?

6 A. Uh-uh. I see it.

7 Q. And you see Lake Park, Old Dixie Highway. Is
8 that the Augustins's former MAACO center?

9 A. The Lake Park, Old Dixie Highway, yes, indeed is.

10 Q. And that's where David Stefan --

11 A. David Stefan operates currently.

12 Q. All right. And the X that's rig

12 Q. All right. And the X that's right next to it -
13 well, really on top of it, has an address of 1009 Newman
14 Road. Do you see that?

15 A. I do.

16 Q. Okay. And what is that location?

17 A. That was the location the Augustins continued to
18 operate both formerly as a MAACO location.

19 Q. And off to the side to the right in the Atlantic
20 Ocean over here, there's a box that says 1913.6 feet.
21 Do you see that?

22 A. Indeed, it measures the distance from that Old
23 Dixie Highway location to the 1009 Newman Road location
24 designating that the two locations are nineteen hundred
25 and thirteen and a half feet apart from one another.

1 Q. Okay. So would you agree then that the
2 Augustins's new location is less than a half mile away
3 from the former MAACO center?

4 A. I'm not quite sure of my math on a half a mile,
5 but I'll certainly say it's -- it's less than 2,000 feet
6 away, yes.

7 Q. Okay. Thank you. Is the Augustins's continued
8 operation of a competing automobile painting and repair
9 shop at that Newman Road location harmful to the new
10 franchisee, David Stefan?

11 A. It -- it's harmful beyond the implications --

12 MR. BUKOWSKI: Objection. Calls for
13 speculation; lack of foundation.

14 THE COURT: It's appropriate. You better
15 find out if the witness is in a position or not to know
16 what's happened to Mr. Stefan.

17 BY MS. AMARANTE:

18 Q. Mr. Monaghan, have you had any communications
19 with Mr. Stefan?

20 A. Yes.

21 Q. And have you had communications with him
22 regarding his operation of the new MAACO center in Lake
23 Park?

24 A. We have, indeed.

25 Q. Okay. Have any of those communications with

1 Mr. Stefan concerned the Augustins's continued operation
2 of an automobile painting and repair shop at Newman Road
3 in Lake Park?

4 A. I occupies almost every one of our conversations
5 exclusively.

6 Q. And in your experience, in your years of
7 experience as -- in the operations of MAACO, do you have
8 experience with whether or not a competing center very
9 close to an existing location would harm a franchisee?

10 A. It clearly would. Even if you would use this map
11 as our --

12 MR. BUKOWSKI: Objection. Objection, Your
13 Honor. It lacks foundation.

14 THE COURT: Well, I think --

15 MR. BUKOWSKI: To the extent she's asking
16 about this franchisee, you know, she -- it certainly
17 calls for hearsay.

18 MS. AMARANTE: Well, I actually -- Your
19 Honor, the witness has over ten years experience in the
20 MAACO system, and I asked if in his experience he has
21 seen that it's harmful to an existing franchisee when
22 there's competition.

23 THE COURT: I think the witness can answer
24 that kind of generalized question. He can't tell us
25 about the damage that Stefan without more.

1 MS. AMARANTE: Okay. Thank you, Your Honor.

2 THE WITNESS: To continue, clearly we would
3 never place a MAACO center 2,000 feet away from an
4 existing MAACO center. And in this case, essentially
5 you have a MAACO franchisee representing him as a MAACO
6 franchisee, using our operating system, using our
7 information system, using our national accounts, using
8 our vendor relationships to operate 2,000 feet away from
9 another MAACO. By our own map, we don't have a shop
10 within six miles of one another in this market.

11 We certainly wouldn't put 2,000 feet away
12 because clearly all of the information and all of the
13 training we provided to the Augustins would put him --
14 put David Stefan's operation in harm's way to allow that
15 to continue to operate.

16 BY MS. AMARANTE:

17 Q. Okay. I'm going to ask you to please turn back
18 to Plaintiff's Exhibit 2 now, which is that franchise
19 agreement. And we're going to look at section 17C,
20 which is the covenant not to compete.

21 A. (Witness complies.)

22 Q. Okay. And just reading the language of 17C, it
23 says that, "Franchisee covenants that for a period of
24 one year after the expiration or termination of this
25 agreement regardless of the cause of termination or the

1 date upon which franchisee ceases to operate the
2 business franchised hereunder following termination or
3 expiration of this agreement, whichever is later,
4 franchisee shall not either directly or indirectly for
5 himself or through on behalf of or in conjunction with
6 any other person, persons, partnership, or corporation,"
7 and then it goes onto talk about the things that are
8 prohibited.

9 Based on this language, in your experience with
10 over ten years in operations with the MAACO system, has
11 the one year time period for the covenant started to run
12 yet for the Augustins?

13 A. It has yet to begin. Not only based on what's
14 stated here in the franchise agreement, what was also
15 stated in his termination letter that we had a
16 reasonable expectation and his compliance with our post
17 termination obligations and noncompete covenants which
18 have never begun.

19 So, therefore, you know, this one year time
20 period clearly hasn't even begun yet because he
21 continues to own and operate and participate in a
22 competing collision and repair and auto painting shop
23 and still represents himself and still holds all of our
24 manuals, still has our information system -- I mean,
25 this is a travesty to think it started. It's clearly

1 not started yes.

2 Q. Okay.

3 MS. AMARANTE: Your Honor, I just need one
4 moment.

5 (Pause in proceedings.)

6 MS. AMARANTE: I'm now going to offer as
7 Plaintiff's Exhibit 13 a document entitled, "Security
8 Agreement."

9 (Pause in proceedings.)

10 BY MS. AMARANTE:

11 Q. Have you seen this document before?

12 A. I did last week.

13 Q. Is last week the first time you saw it?

14 A. It was indeed. In the prior courtroom last week
15 was the first time that it was presented to me.

16 Q. And what is your understanding of what this
17 document is?

18 A. Without being politically correct, it's another
19 straw transaction on behalf of the defendant to
20 represent that he no longer is participating in the
21 ownership or operation of Palm Beach Auto Painting and
22 Body Works, formerly MAACO.

23 Q. And does this sale of the -- strike that.

24 Does Mr. Augustin's sale of his stock in Palm
25 Beach Auto to Mr. Samson mean that he's no longer

1 engaged in a competitive business?

2 MR. BUKOWSKI: Objection; calls for a legal
3 conclusion.

4 THE COURT: Sustained.

5 MS. AMARANTE: Okay.

6 BY MS. AMARANTE:

7 Q. Based on your understanding of this document,
8 does Mr. Augustin retain a security interest in the Palm
9 Beach Auto business?

10 A. He does. He continues to hold the debt for this
11 business and, therefore, has an interest in this
12 business, so consequently, has not completely separated
13 from it.

14 Q. And is having -- well, strike that.

15 Would having a security interest in the business
16 qualify as an indirect participation in a competing
17 business in your mind?

18 A. I think it's -- it's --

19 MR. BUKOWSKI: Objection; calls for a legal
20 conclusion.

21 THE COURT: Sustained.

22 MS. AMARANTE: All right. Withdrawn.

23 BY MS. AMARANTE:

24 Q. Has MAACO been harmed by the Augustins's refusal
25 to comply with the covenant not to compete in their

1 franchise agreement?

2 A. Without a doubt. It's a monumental harm. Again,
3 I think it was stated in the opening remarks, not only
4 the entire MAACO chain and our franchise users are
5 watching this, quite honestly, the entire franchise
6 community is watching this as a precedent case.

7 You have a franchisee that for years not only
8 paid his -- did not pay his obligations to us, didn't
9 pay his obligations to his landlord, continues to
10 then try to separate himself from the brand by -- by not
11 really doing so and enjoys all of the benefits of the
12 MAACO brand in operating his current business, to allow
13 him compete and operate in such is causing us
14 irreparable harm. It could mean chaos for our system
15 and any other franchisor that would allow for franchisee
16 to simply say, that agreement to not compete doesn't
17 apply to me.

18 So, yes, it's irreparable harm that could cause
19 our entire franchise system to collapse on itself if we
20 had 470 franchisees that are watching this decide to do
21 the same thing.

22 Q. And is there any way to place a number on the
23 harm that MAACO is suffering today?

24 A. Other than the value of the entire company, so I
25 can't imagine it would be -- it's incomprehensible of

1 what that number would be.

2 Q. Okay. What relief is MAACO looking for from the
3 Court today?

4 A. Again, we are looking for two specific things:
5 We are looking for the cease and desist of Palm Beach
6 Auto in Lake Park on that specific address where it was
7 operating, and we're looking for the repayment of all
8 the outstanding monies.

9 But first and foremost, our most important thing
10 is to have Palm Beach Collision Repair and Auto Painting
11 closed immediately.

12 (Pause in proceedings.)

13 MS. AMARANTE: I'm now going to offer as
14 Plaintiff's Exhibit 14 a letter dated July 28th, 2009.

15 (Pause in proceedings.)

16 BY MS. AMARANTE:

17 Q. Are you familiar with this document, Mr.
18 Monaghan?

19 A. I am.

20 Q. And what is it?

21 A. It is a letter written from our general counsel,
22 Ted Pearce, to a attorney representing the Augustins in
23 reference to the fact that we have been working with
24 them since July of -- even prior to that -- April to
25 work with them to recognize that they are owning and

1 operating and involved in a competing business and that
2 we are doing everything we possibly can to get him to
3 live up to our expectations of the covenant and the
4 terms of his termination.

5 Q. Okay. And looking at the second page of the
6 document, can you testify to what the amount was that
7 the Augustins owed to MAACO as of July 28th, 2009?

8 A. \$108,599.03.

9 Q. And looking at the next page after the letter,
10 there's a MAACO statement account; do you see that?

11 A. Uh-uh. I do.

12 Q. What does this document show?

13 A. This is a statement representing how that
14 \$108,599.03 was calculated due to the combination of
15 outstanding royalties that would be to us, outstanding
16 advertising expenditures that were due to us, and his
17 paint and supply count due to us. The sum of those
18 three line items.

19 MS. AMARANTE: Absent objection, I would
20 move to admit Plaintiff's Exhibit 13 and 14 as full
21 exhibits at this time.

22 THE COURT: Any objection?

23 MR. BUKOWSKI: No objection to 13.

24 As to 14, to the extent it's being offered
25 not for the truth of the matter, the matters stated

1 therein, I would have no objection. Otherwise, it would
2 be -- those statements contained in the letter would be
3 hearsay.

4 THE COURT: Well, I take it you're not
5 offering it for the truth; are you?

6 MS. AMARANTE: Well, Your Honor, I believe
7 it can be offered for the truth because this is a
8 document that MAACO retains in its general business
9 records and that would be a hearsay exception.

10 THE COURT: It can be offered for the truth.
11 Can it be admitted for the truth? I'll tell you, I
12 don't think so.

13 MS. AMARANTE: Okay.

14 THE COURT: Now, I mean, I'll be glad to
15 admit it not for the truth of what's recited there.

16 MS. AMARANTE: Okay. Thank you.

17 (Whereupon, Plaintiff's Exhibit Nos. 13 and
18 were admitted into evidence.)

19 MS. AMARANTE: I'm now going to offer
20 Plaintiff's Exhibit 15, which is a Notice of Default
21 dated December 3rd, 2008.

22 BY MS. AMARANTE:

23 Q. Are you familiar with this document?

24 A. I am.

25 Q. And is this a document that MAACO keeps in its

1 regular business records?

2 A. It is.

3 Q. Okay. And what does this document show with
4 respect to how much the Augustins owed MAACO at the time
5 of the initial default?

6 A. Again, this -- it showed a \$59,948.46 that was
7 due to us as of December 2nd. And consequently, this
8 notice of default is also referred to then in our
9 franchise termination on April 9th.

10 Q. And by the time of termination, the amount of
11 money due and owing to MAACO had grown, correct?

12 A. Absolutely. Again, our expectations, when we
13 have a notice of default to a franchisee as it's written
14 here, we have the expectation the franchisee will make
15 every effort then to report and pay current on a weekly
16 basis not to get any further behind in his obligations
17 to us. Consequently, we -- you know, we flash forward
18 here four months later into April, and that \$59,000 has
19 escalated to \$93,000. You flash forward a couple months
20 later and now it's \$108,000.

21 So despite them being in default, they made no
22 effort or attempt to try and cure that default or even
23 begin to at least stay current so that they didn't get
24 any further in the hole or behind with us. It only
25 escalated and got worse and worse as each week

1 progressed.

2 THE COURT: Counsel, how much longer do you
3 expect the direct examination to take?

4 MS. AMARANTE: Your Honor, I'm just about
5 finished. If I can have a moment to confer with
6 counsel?

7 THE COURT: Okay.

8 (Pause in proceedings.)

9 BY MS. AMARANTE:

10 Q. Mr. Monaghan, in your experience with ten years
11 in operations with MAACO, when a franchisee's amount due
12 and owing to MAACO are increasing that rapidly, what
13 does that tell you?

14 A. Clearly, we have someone who is not working in
15 earnest to resolve this situation. They are not
16 reporting what's going on, not trying to make an effort
17 to cure the situation, not communicating as in a way
18 that would put us in a position to want to continue to
19 work with that franchisee and resolve this in a long
20 term. So we're left at no choice than to termination
21 after what is a reasonable time period to try to work
22 this out.

23 Q. Thank you, Mr. Monaghan.

24 MS. AMARANTE: I have no further question,
25 Your Honor.

1 THE COURT: All right. I think we've been
2 going now for an hour and a half. It seems to me we
3 ought to have a brief recess. I'm concerned though
4 about our timing. When we last met, I was surprised by
5 plaintiff's counsel with it would take about four hours
6 on plaintiff's case. We're still not finished with
7 plaintiff's first witness, and I'd like to know what
8 your -- what you think will happen in terms of what kind
9 of schedule you expect to conclude on. Can we complete
10 it at 6 o'clock or 6:30?

11 MS. AMARANTE: I'm hopeful that we can, Your
12 Honor. And the other witnesses that MAACO will offer
13 today will have significantly shorter testimony. But a
14 lot of that will depend on defense counsel's
15 examinations as well. So I'm --

16 THE COURT: Well, the other witnesses better
17 be an awful lot briefer if we want to get anywhere.

20 MR. BUKOWSKI: Forty-five minutes.

21 THE COURT: Forty-five minutes?

22 MR. BUKOWSKI: I will cut it down as much as
23 I can, Your Honor. It may -- I'd hate to tell you less
24 and then run over. I -- I --

25 THE COURT: All right. All right. We'll

1 take a five minutes recess.

2 COURTROOM CLERK: All rise.

3 (Brief recess.)

4 THE COURT: All right. Proceed with the
5 cross-examination.

6 MR. BUKOWSKI: Your Honor, in light of the
7 timing concerns, I've cut down any cross-examination
8 considerably --

9 THE COURT: Good.

10 MR. BUKOWSKI: -- and we'll take that --

11 THE COURT: Excellent.

12 MR. BUKOWSKI: -- take that approach.

13 CROSS-EXAMINATION

14 BY MR. BUKOWSKI:

15 Q. Mr. Monaghan, please tell the Court what
16 specifically MAACO does different from its competitors
17 in its industry.

18 You've described these alleged trade secrets.

19 What are the trade secrets that MAACO's claiming?

20 A. A little bit of an oxymoron if you're asking me
21 to disclose the trade secrets, if you will, publically
22 for the record. I guess I feel obligated to do so as
23 asked.

24 It begins with a very fundamental premise of our
25 business in order for us, first the fact at how we

1 advertise. No one advertises the way we advertise. And
2 part of our operating system, we use a price leader TV
3 advertising. No one else in our industry does that.

4 We use a merchandising --

5 Q. Let's stop right there.

6 A. Okay.

7 Q. But the fact that you do it is not a secret.

8 A. Well, but then what we do with the way we handle
9 a customer with our merchandising system, our selling
10 system, our production system, our equipment
11 configuration, the materials in which we use, those are
12 all proprietary. So I was starting at an A, if you
13 will.

14 Q. All right. Well, let's start with a price leader
15 advertising. The fact that MAACO uses that, it may be
16 the only one to do it. I don't know. But you're not
17 suggesting that that fact in and of itself is a secret,
18 are you?

19 A. No.

20 Q. Okay.

21 A. It's what we then do to merchandise or sell to
22 those customers once we convert. They listen to it and
23 then either call the store. And the way we handle the
24 phone, the way we then sell to the customers, the
25 merchandising words that we use --

1 Q. Okay. Take me through that process and describe
2 how it's different.

3 A. How it's different?

4 Q. Or what's secret about what MAACO does.

5 A. Again, what's secret about it or what is the
6 accumulation of all the elements of our operating
7 system, it's like a domino. It's the way we advertise,
8 the way we sell, the way we use the information
9 internally to -- for the operating system, the way we
10 produce the work in the back of the shops.

11 Q. All right. What about the --

12 A. The materials we use.

13 Q. What about the way you sell is proprietary or
14 secret?

15 A. Again, the -- the -- the way we sell is using a
16 merchandising ladder in order to walk customers through
17 a value equation to what -- to find out what's best for
18 them. In any other body shop in the country, you'll
19 walk into a shop, get an estimate written only one way
20 with little or no options for the customer to decide
21 whether they want to use certain materials or not do
22 certain work. There's one way to write the estimate.
23 In our system, it is not.

24 Part of the secret is giving the customer options
25 that would not get elsewhere. And so, consequently,

1 it's not the way any one else does business out there
2 other than us.

3 Q. But apart from the fact that MAACO may be the
4 only person giving the customer choices --

5 A. Uh-uh.

6 Q. -- you're not contending that that is a secret
7 that MAACO does it?

8 A. It's part and parcel to our operating system,
9 which, again, is proprietary.

10 Q. What do you mean by proprietary? I don't
11 understand what that means in the context of what MAACO
12 does.

13 A. I don't understand what you don't understand.
14 Sorry.

15 Q. You know, I want you to explain to the Court --

16 THE COURT: I think the -- I think the
17 question is when you use the adjective "proprietary."

18 THE WITNESS: Uh-uh.

19 THE COURT: What do you have in mind?

20 THE WITNESS: The expectation that the way
21 we do things and the way we train our franchisees to do
22 things is completely different than anyone else in the
23 industry. There is no other industry training you can
24 go to, to learn to do the things the way we do them.
25 We're the only ones who train to -- to handle our

1 customers this way, to handle the cars the way we handle
2 them, to use the materials that we use, to use the
3 processes and even in the back of the shop of sort of an
4 assembly line environment where we have specialized
5 employees doing only specialized work, unskilled labor
6 doing unskilled work that we train them to do a very
7 specific way to the MAACO operating system that's not
8 done any other way like that in any other body shop. So
9 without exposure to our operating system, you would have
10 no knowledge of how to do that.

11 THE COURT: It seems to me a little
12 puzzling. I will accept it because you say so, but none
13 of your competitors do the -- go through that elaborate
14 processes of marketing and training and selling that you
15 do.

16 But I guess something of a puzzle is to know
17 what it is within any of those elements that's secret.
18 I suppose anybody who's gone to one of your franchises
19 and to a competitor at one time or another knows that
20 she gets options suggested to her. I can understand
21 that that would be very attractive, but that's no longer
22 a secret.

23 THE WITNESS: Well, and then in the way in
24 which we deliver that to the customer is again part of
25 that, right? It's no different than, you know, Kentucky

1 Fried Chicken saying they've got a secret recipe and yet
2 everyone whoever worked at the KFC probably knows that
3 recipe because they make it all day long.

4 It's -- it is in inherent fact that the way
5 we produce the work, the materials we use, the processes
6 that we use that are proprietary to us, that are unique
7 only to MAACO.

8 THE COURT: All right.

9 BY MR. BUKOWSKI:

10 Q. You talked about the confidential operating
11 manuals. Do you know today where the operating manuals
12 that were provided to Mr. Augustin are located?

13 A. I do not. They have never been returned to us.
14 That's all I know.

15 Q. Okay. Did you have hear the name of Inderia
16 Bellino?

17 A. No.

18 Q. Okay. Do you have still have the exhibits up
19 there?

20 A. I do.

21 Q. Would you turn to Plaintiff's Exhibit 2, the
22 franchise agreement.

23 A. I have it.

24 Q. Okay. And section 4, Fees, on the top of page 2.
25 The franchisee pays an initial franchise fee of \$30,000;

1 is that right?

2 A. That's what it says, yes.

3 Q. Okay. And did Mr. and Ms. Augustin do that in
4 this case?

5 A. They were obligated to do so.

6 Q. Okay. So they did? That's fine.

7 THE COURT: Excuse me. Which paragraph are
8 we looking at?

9 MR. BUKOWSKI: Section 4, subsection A, on
10 the top of page 2, Your Honor.

11 THE COURT: I see. All right.

12 BY MR. BUKOWSKI:

13 Q. So they did pay?

14 A. I have no -- I did not receive that fee
15 personally, so I can't tell you whether they did or did
16 not.

17 Q. Well, there's a lot of things you didn't receive
18 personally that you testified to in court about; isn't
19 that true?

20 A. Again, this would have been as it says here, "Due
21 and payable upon the signing of the agreement." It's
22 all of the subsequent fees that I would have been
23 responsible for and party to their collection
24 thereafter, not the franchise fee.

25 Q. Okay. As you sit here today, you have no reason

1 to believe they didn't pay the fee?

2 A. Correct.

3 Q. Okay.

4 A. Yes.

5 Q. And then each week, the franchisee is required to
6 pay MAACO an amount equal to nine percent of the gross
7 receipts of the center.

8 A. That is correct.

9 Q. Okay. And that's -- gross receipts is as broad
10 as you can get. Any dollar in the door of the
11 franchisee goes into that calculation?

12 A. Minus sales tax, yes.

13 Q. Okay. And there's an initial software license
14 fee of \$5,000 for the --

15 A. Yes.

16 Q. -- for the Polaris software, right?

17 A. Yes.

18 Q. Okay. And then working capital deposit of
19 \$10,000.

20 A. Yes.

21 Q. Okay. And then the weekly royalty fees and
22 continued -- what are the advertising contributions?

23 A. The advertising contribution is on behalf of each
24 franchisee, he is obligated to make an investment in the
25 media and advertising that's done on behalf of his

1 center in his market area, and that can range from \$850
2 to \$1,100 per week.

3 Q. And in this agreement, section 5 also on page 2,
4 it talks about the initial advertising contribution
5 being \$7,500; is that right?

6 A. That's what it states, yes.

7 Q. Okay. And then I think you were right. In
8 section 5B the amount -- the weekly advertising
9 contribution is \$850?

10 A. Or greater.

11 Q. Right.

12 A. Whatever is bearing in the marketplace.

13 Q. Okay. A minimum of \$850?

14 A. Correct.

15 Q. Okay. Now, if Mr. Augustin continued to operate
16 a competing business in -- within the restricted
17 territory as you contend, couldn't MAACO just measure
18 nine percent of whatever money he earned and say that's
19 what MAACO should be -- should receive?

20 A. That's one small element there, right. I mean,
21 the ability then to have a franchisee who no longer
22 operates and walked away from his obligation to -- to --
23 to not to compete, how do I put a number figure on that?
24 I mean, that's -- that's putting our whole franchise at
25 risk.

1 Q. I guess let me ask you, the question specifically
2 was if you knew what he took in --

3 A. Uh-uh.

4 Q. -- at his allegedly competing center, you could
5 calculate nine percent of that, correct?

6 THE COURT: At his allegedly preceding
7 center?

8 MR. BUKOWSKI: Competing. It went --

9 THE COURT: Allegedly competing center.

10 THE WITNESS: I don't know what that means.

11 I mean, we certainly can compete -- could calculate nine
12 percent of whatever revenues he generated, right? I
13 mean --

14 BY MR. BUKOWSKI:

15 Q. Yes.

16 A. -- I don't -- that certainly wouldn't fulfill his
17 obligation under his termination.

18 Q. I understand. And you said he walked away. He
19 didn't walk away from his franchise. You terminated the
20 franchise; isn't that right?

21 A. Yes, we did.

22 Q. Okay. Let's make sure we get that right.

23 Now, under the agreement, MAACO has a right to
24 audit its franchisee; isn't that right?

25 A. It is.

1 Q. When was the last audit conducted of the
2 Augustins's franchise?

3 A. I'm unable to give a specific date on that. He
4 was audited twice during his tenure. I don't know the
5 specific dates.

6 Q. Would June or July of 2006 surprise you?

7 A. I'm sure if you had an audit letter there that
8 would recollect my mind or memory or an audit finding
9 report that would tell me the timeframe, that sounds
10 about right. But I can't be sure.

11 Q. Okay. Tell me about what the -- how the Polaris
12 system, how does that work that's proprietary or secret
13 to use your terminology?

14 A. Again, it holds all of our -- all the customer
15 information, all that was done for each of those
16 customers and at what price, in terms of who did it, how
17 it was sold. And, consequently, you know, it is our
18 customer list, for lack of a better word, let alone our
19 management information system. The way we measure all
20 of the benchmarks to the relative success of that
21 business are measured in Polaris.

22 Q. And don't you need an access code or a password
23 to get onto that system?

24 A. Only when initially installed.

25 Q. So I could go on? Get on that system right now

1 without a password?

2 A. You could go on if the Augustins have a version
3 of Polaris currently, you could indeed go onto that
4 system. Again, you would only need a password to get
5 into the management piece. You could certainly use it
6 as a salesperson. It is then password protected beyond
7 that to the administrative -- administrative level where
8 you have salary information, pricing file information.
9 You would be able to use it essentially as a POS system,
10 a point of sale system.

11 The management information piece is password
12 protected and only the owner would know that password if
13 it doesn't expire.

14 Q. And would MAACO be able to determine whether
15 that's been accessed?

16 A. I can't answer that question. I can't.

17 Q. Okay. Do you know how long Mr. Augustin was in
18 the body shop/collision repair business prior to signing
19 his franchise agreement in October 2002?

20 A. I've seen copies of his resume that he submitted
21 when he did his franchise application back in 2002, yes.

22 Q. And how long?

23 A. He had, I believe, 11 or 12 years of controller
24 experience per his resume, which not necessarily meant
25 that he was in the day-to-day operations, that he did

1 the books for the business.

2 Q. Okay. But you don't know what he did day to day?

3 A. I'm just going by what his resume says --

4 Q. Okay.

5 A. -- that that's what he did.

6 Q. Okay. So you don't know what he did day to day?

7 A. No.

8 Q. Who are MAACO's competitors in terms of
9 franchises or body shops?

10 A. There is -- there are no other national franchise
11 competitors. Our competitors are typically the
12 collision repair and auto body shops that exist within a
13 marketplace either independent or dealership operated
14 franchise, you know, car dealership, Ford dealership
15 body shop.

16 Q. Sure. Do you know how many of those other body
17 shops or collision repair centers are located within ten
18 miles of the MAACO franchise that Mr. Stefan operates?

19 A. I do not. MAACO's or others?

20 Q. Others.

21 A. I do not.

22 Q. How many --

23 A. I know of one.

24 Q. How many MAACOs are within ten miles?

25 A. There would be one other within ten miles.

1 Q. Referring to your -- MAACO's termination letter,
2 that's the letter that was marked as Exhibit 7; do you
3 have that?

4 A. I do.

5 Q. The effective date of that termination letter is
6 April 9th, 2009; isn't that right?

7 A. That is correct.

8 Q. Okay. Now, turning to the LKQ invoice,
9 Exhibit 9. Let me know when you have that.

10 A. Got it.

11 Q. Okay. MAACO doesn't have an exclusive
12 arrangement with LKQ; is that right?

13 A. We have an exclusive discounting arrangement;
14 however, we're clearly not their only customer.

15 Q. Okay. Thank you. That's more accurate. That's
16 what I was asking. That body shops and other companies
17 other than MAACO buy products from LKQ?

18 A. Yes.

19 Q. Okay. Can you show me on Exhibit 9 where the
20 MAACO discount appears?

21 A. I cannot based on this piece of -- this piece of
22 paper, no.

23 Q. Okay. And Exhibit 10, I guess you were referring
24 to page 2 of that.

25 A. I'm sorry. Exhibit 10 by title is which one?

1 Q. I guess the first page is the fax sheet.

2 A. Got it.

3 Q. Okay. The second page of Exhibit 10, I think you
4 described as a proprietary MAACO invoice?

5 A. Repair order.

6 Q. Repair order, okay.

7 A. Yup.

8 THE COURT: I'm sorry. Which is --

9 MR. BUKOWSKI: Page 2 of Exhibit 10, Your
10 Honor.

11 THE COURT: Which is 10? Okay. Page 3?

12 MR. BUKOWSKI: Page 2, Your Honor.

13 THE COURT: Page 2.

14 BY MR. BUKOWSKI:

15 Q. And looking at the bottom right hand corner of
16 page 2, there's some numbers -- letters and numbers.
17 They're PA-001357; do you know what that is?

18 A. I do not.

19 MR. BUKOWSKI: I'll represent to the Court
20 that those were numbers and letters put on it by Mr.
21 Augustin's counsel that we call -- attorneys call Bates
22 numbers when we produce documents.

23 THE WITNESS: Okay.

24 BY MR. BUKOWSKI:

25 Q. Were you aware that this document was produced in

1 this case by Mr. Augustin through his counsel?

2 A. Okay.

3 Q. Did you know that?

4 A. I did not.

5 Q. Okay. Now, getting to the repair order itself,
6 what is proprietary or secret about this repair order?

7 A. Again, there couldn't be much more proprietary --
8 the name used in the top left is, "MAACO Collision
9 Repair and Auto Centers." Is there much more
10 proprietary than our name?

11 Q. Well, that's a trademark. I understand that.

12 A. Okay.

13 Q. I'm talking about, you know, you're using the
14 term "trade secret" and "proprietary information" in the
15 complaint --

16 A. Uh-uh.

17 Q. -- and I want to know if there's anything on --

18 A. Again --

19 Q. -- on this.

20 A. -- from a proprietary standpoint, the design of
21 this form, the way in which it is laid out is -- is
22 nothing like if you look two pages later, three pages
23 later by your own counsel's admission, this is what a
24 repair order would look like, and he's got a copy of it
25 here, that's done by everybody else. You can see the

1 difference in how much more customer friendly usable --
2 user it is than compared to what you see.

3 THE COURT: What page?

4 THE WITNESS: So if you move to page --

5 BY MR. BUKOWSKI:

6 Q. Show --

7 THE COURT: What page?

8 THE WITNESS: Page 4.

9 BY MR. BUKOWSKI:

10 Q. Tell the Court what page you were referring to.

11 A. Page 4 here. You have your PA-001360 on the
12 bottom right.

13 Q. Right.

14 A. That is a repair order used by the industry
15 outside MAACO.

16 Q. Okay. And to whom is the MAACO repair order
17 given?

18 A. To the customer or the third party paying for the
19 repair.

20 Q. So once a customer has it, they can give it to
21 whoever they want and any body shop could copy this if
22 they so chose?

23 A. They could, but then we would then be fighting
24 them for using our forms.

25 Q. Okay. Do you know if that form is copyrighted?

1 MR. BUKOWSKI: Go ahead, Your Honor.

2 THE COURT: I don't know whether the witness
3 is in a position to tell me this, but the two documents
4 -- the document on page -- the second page of the -- it
5 says (indiscernible) here up at top --

6 THE WITNESS: Correct.

7 THE COURT: -- the document that
8 says "Phil's Auto Body."

9 THE WITNESS: Uh-uh.

10 THE COURT: On the basis of quickly skimming
11 them, have a notion that these are referring to the same
12 transaction.

13 THE WITNESS: It is referring to the same
14 customer and the same car, so being a MAACO customer
15 that Palm Beach continues to try to collect additional
16 work and additional revenue from.

17 THE COURT: Well, it's not only the same
18 car, it's the same repair or addition; is it not? A
19 high note horn for \$65.81?

20 THE WITNESS: Correct. And that work that
21 you see there is in addition to the work listed on the
22 prior pages. It's a -- in our business, it would be
23 called a supplement. It's a asking for additional
24 monies to perform additional procedures on top of what
25 they had already done.

1 THE COURT: Now, the document -- the second
2 of these documents, the document with Bates number
3 1360 --

4 THE WITNESS: Yes, sir.

5 THE COURT: -- it says "Phil's Auto Body" up
6 at the top.

7 THE WITNESS: It does.

8 THE COURT: This is not a document which
9 falls within your range of proprietary materials?

10 THE WITNESS: That's correct.

11 THE COURT: So Phil's Auto Body was at least
12 doing something that was not a trespass on your
13 proprietary interests when it generated this document on
14 July 2nd, 2009?

15 THE WITNESS: Well, other than they are
16 overtly willing to do business with a obvious MAACO
17 customer that they represented. So they're still -- you
18 know, part of our covenant not to compete is they will
19 not seek to gain any business from our customers of that
20 location.

21 Clearly here, they are seeking -- continue
22 to do business with a customer of that MAACO location.

23 THE COURT: All right. I --

24 THE WITNESS: So they're diverting business,
25 if you will, from the existing -- the new MAACO that

1 opened up by doing so.

2 BY MR. BUKOWSKI:

3 Q. And when was it that the new MAACO opened up?

4 A. Late July of '09. I believe, July twenty -- the
5 week of July 24th.

6 Q. And when did MAACO first learn of the existence
7 of David Stefan who has since become the new MAACO
8 franchisee?

9 A. I can't give you an exact date, but I can tell
10 you it was certainly in the winter and the early spring
11 of 2009.

12 Q. And how did that -- how did MAACO become aware of
13 Mr. Stefan then?

14 A. One of my operations directors was interviewing
15 sales people, candidates for another MAACO location as
16 an employee. Upon that interview, we felt that
17 Mr. Stefan would potentially qualify to become a
18 franchisee, and he stated he had interest in potentially
19 becoming a franchisee. So that's how it all began.

20 Q. And did you discuss with Mr. Stefan the
21 possibility of him becoming a franchisee in the winter
22 of 2008, 2009?

23 A. Well, at that point, we had asked him to have
24 actually direct conversations with Mr. Augustin to the
25 potential purchase of his location.

1 Q. And why was that?

2 A. Because at that point, Philippe was in default.
3 We were giving him an opportunity to try and sell his
4 center and felt it would be in everyone's best interest
5 to give him someone that we felt might be a qualified
6 lead in order to try to sell that center.

7 Q. Did Mr. Augustin ever ask you or anybody else at
8 MAACO to help him reduce the amount of rent he was
9 paying?

10 A. He did not ask me personally.

11 Q. Are you aware of him asking somebody else?

12 A. Well, I know when he was in default with his
13 landlord, he -- part of his defense was that his rent
14 was simply too high. So, therefore, would you imply
15 that he thought his rent was too high because he wasn't
16 paying any of it? I guess that can be made.

17 Q. Let me --

18 (Pause in proceedings.)

19 MR. BUKOWSKI: Let me mark as Defendants's
20 Exhibit 1 --

21 (Whereupon, Defendants's Exhibit No. 1 was
22 marked for identification.)

23 (Pause in proceedings.)

24 BY MR. BUKOWSKI:

25 Q. Mr. Monaghan, you have what's been marked as

1 Defendants's Exhibit 1 in front of you.

2 A. Uh-uh.

3 Q. Okay. And that's a series of e-mails. As you
4 can see, beginning on the second page, the earliest
5 e-mail is from Diana Dieciedue. And who is she?

6 A. She is the vice president of licensing, the
7 former vice president of licensing for MAACO Franchising
8 and Enterprises.

9 Q. Okay. And is she here today?

10 A. She is.

11 Q. Okay. She's sitting in the courtroom; is that
12 right?

13 A. She is.

14 MR. BUKOWSKI: Let the record reflect that
15 Ms. Dieciedue has raised her hand in the first row
16 there.

17 MR. FOURNARIS: She's not happy about your
18 pronunciation there.

19 MR. BUKOWSKI: Well, I apologize. Maybe Mr.
20 Monaghan can correct me.

21 BY MR. BUKOWSKI:

22 Q. How do you pronounce that.

23 A. We were just having this conversation in the
24 hallway, but go by Dieciedue.

25 Q. Okay.

1 MR. BUKOWSKI: I apologize.

2 MS. DIECIEDUE: It wasn't bad.

3 BY MR. BUKOWSKI:

4 Q. And it appears that you are a recipient of that
5 first e-mail and then several other e-mails on --

6 A. Yup.

7 Q. -- this. Okay. And on the first e-mail, Ms.
8 Dieciedue is discussing sending Philippe -- referring to
9 Mr. Augustin, I assume; is that right?

10 A. Yes.

11 Q. A supplemental notice of default and is asking --
12 and asks, "Do you agree that I should hold off on
13 sending the notice as it looks like the landlord is
14 moving forward to evict." And then in parenthesis, per
15 Frank, eviction should not take more than seven days.
16 Once Philippe loses possession to the premises, it will
17 be grounds for immediate termination of the franchise
18 agreement. If the eviction does take place, I would
19 assume that since there are so many vehicles at the
20 location, operations will probably have to assist with
21 the customers and their vehicles getting them to another
22 MAACO center, etcetera."

23 Do you recall receiving this e-mail?

24 A. Now that I read it, yes.

25 Q. Okay. And isn't it true that in February of 2009

1 you and others at MAACO were discussing the termination
2 of Mr. Augustin's franchise through the fact that he
3 looked like he was about to be evicted from the
4 premises; isn't that right?

5 A. Yes.

6 Q. Okay. And then if you go to the first page of
7 Exhibit 10 --

8 A. Uh-uh.

9 Q. -- Ms. Dieciedue said -- Dieciedue, excuse me --
10 sends an e-mail to Frank Costello. And who is that?

11 A. He is our vice president of real estate.

12 Q. Okay. And she forwards that e-mail. Then it
13 looks like she's forwarding an e-mail from Bill Bass.
14 And who's Bill Bass?

15 A. Bill Bass was a former regional operations
16 director.

17 Q. Okay. And he's sending an e-mail to Ms.
18 Dieciedue with a copy to Doug Engle --

19 A. Yup.

20 Q. -- dated February 18th, 2009, 5:29 p.m. And
21 who's Mr. Engle?

22 A. Our assistant vice president of operations.

23 Q. Okay. And then Mr. Bass is also saying, "I've
24 also spoken with the landlord and feel he will be
25 willing to reduce the rent. Although he did not say so

1 directly, he did ask to speak with me again about it
2 after I told him we would not be willing to put another
3 franchise in there at the current rent. I asked him to
4 consider around \$8,000 a month. I will speak with him
5 on Thursday."

6 Were you aware that Mr. Bass had spoken to the
7 landlord?

8 A. I was not cc'd on this, but I was aware the
9 conversation took place.

10 Q. Okay. And in that conversation of February,
11 someone at MAACO is talking to Mr. Augustin's landlord
12 about reducing the rent; isn't that right?

13 A. It appears to be -- that was the conversation
14 based on this e-mail, yes.

15 Q. And the reduced rent was going to be around
16 \$8,000 a month; is that right?

17 A. It was a consideration, not a guarantee there.

18 Q. What was the current rent that Mr. Augustin was
19 paying?

20 A. I can't answer that question. I don't know.

21 Q. Is \$11,000 a month sound about right?

22 A. If you say so. I can't tell you. I don't know.

23 MR. BUKOWSKI: Okay. Let's mark
24 Defendants's Exhibit 2.

25 (Whereupon, Defendants's Exhibit No. 2 was

1 marked for identification.)

2 BY MR. BUKOWSKI:

3 Q. All right. Do you have Defendants's Exhibit 2?

4 A. I do.

5 Q. And that's another e-mail series including an
6 e-mail at the top of the first page Bates numbered MFI.

7 A. That's a continuation of the ones from the prior
8 day.

9 Q. Okay. So that's Thursday, February 19th --

10 A. Uh-uh.

11 Q. -- 2009 from Ms. Dieciedue to Doug Engle, Bill
12 Bass, and yourself; is that right?

13 A. Among others, yes.

14 Q. Okay. And the bottom of the first page of
15 Exhibit 2 is the e-mail that I -- from which I read
16 talking about holding off on sending the notice?

17 A. Correct.

18 Q. Okay. And above that Bill Bass sends an e-mail
19 back to Ms. Dieciedue copying Doug Engle saying that
20 Mr. Bass spoke with Phil's attorney this morning. He
21 has had no success in getting a rent reduction from the
22 landlord. The landlord is moving forward with the
23 eviction process. And then that e-mail looks like it
24 gets forwarded to you by Ms. Dieciedue in a subsequent
25 e-mail at the top of the page one; is that right?

1 A. Yes.

2 Q. And so you knew at the time, February 19th, that
3 Mr. Augustin was trying to get a rent reduction from the
4 landlord; isn't that right?

5 A. Okay. That -- yes. I guess it was inferred that
6 that's what he was trying to do, right. But he was also
7 at that time still in default, wasn't even working
8 through the default.

9 Q. And at the same time MAACO has Mr. Bass talking
10 to the landlord saying, "Well, we'll get the next
11 franchisee in here. You know, we'll consider that if
12 you can reduce the rent." Isn't that what was going on?

13 A. He made a comment that he talked to the landlord
14 about putting potential -- another franchisee in there.
15 At this point I would believe that David Stefan was in
16 the picture because Bill Bass was the one who had
17 interviewed Mr. Stefan and had recommended him as the
18 potential buyer for the Augustins's location.

19 Q. And Mr. Stefan never did buy Mr. Augustin's
20 franchise from him, did he?

21 A. He did not.

22 MR. BUKOWSKI: Let me mark Defendants's
23 Exhibits 3 and 4.

24 (Whereupon, Defendants's Exhibit Nos. 3 and 4
25 were marked for identification.)

1 MR. FOURNARIS: This is a legal form on the
2 letter of franchise.

3 MR. BUKOWSKI: I know it is.

4 MR. FOURNARIS: Well, how is it possibly
5 relevant to this case? He's not a lawyer.

6 MR. BUKOWSKI: You can object then.

7 MR. FOURNARIS: I object.

8 MS. AMARANTE: Your Honor --

9 THE WITNESS: I only have two pages here,
10 sir. More to it? 3 and 4. I'm sorry. Are you
11 introducing two?

12 MR. BUKOWSKI: Three. What do you have for
13 exhibit --

14 THE WITNESS: That one says three and four
15 on the bottom.

16 MR. BUKOWSKI: Yeah. That's it. I got you
17 that was on there previously.

18 THE WITNESS: Okay.

19 MR. FOURNARIS: I'm sorry. Now, I've
20 confused. Is four four or is four three?

21 MR. BUKOWSKI: Plaintiff's -- well, it's
22 marked as Plaintiff's Exhibit 4. It was filed in
23 another case in this district as Plaintiff's Exhibit 4
24 to a complaint.

25 MR. FOURNARIS: I think we should find out

1 where this came from.

2 MR. BUKOWSKI: These are --

3 MS. AMARANTE: Your Honor, MAACO is
4 objecting to these documents both based on foundation
5 and relevance. It's not clear where they came from, and
6 it's not how -- clear how they're relevant to the matter
7 before Your Honor so.

8 THE COURT: Well, I suppose on the basis of
9 it that would look to be the case unless this witness
10 has foundation or information on that.

11 MR. BUKOWSKI: What I plan to do, Your
12 Honor, since this witness testified at length about the
13 MAACO franchise agreement, I was going to show him
14 certain provisions of these other agreements and ask him
15 whether the MAACO agreement has anything similar.

16 MS. AMARANTE: Your Honor, I don't see how
17 the witness has any foundation to talk about other
18 systems's franchise agreements. And I plainly don't see
19 the relevance of having him compare other franchise
20 agreements to the MAACO franchise agreement. The
21 document speaks for itself.

22 THE COURT: Well, I don't think the witness
23 can be helpful on this basis.

24 MR. BUKOWSKI: Well, I wasn't going to ask
25 him to testify about this franchise agreement. I was

1 going to simply ask him if a certain clause in this
2 agreement is in the franchise agreement between MAACO
3 and Mr. Augustin.

4 THE COURT: Well, I think you'll have to --
5 I'm not sure that it's very complicated if it's just a
6 matter of saying is this crows like that crows. I'm not
7 sure that Mr. Monaghan is particularly the best vehicle
8 for doing that.

9 MR. BUKOWSKI: Sure.

10 THE COURT: I suppose you could --

11 MR. BUKOWSKI: I will use that with another
12 witness or later in argument, Your Honor. I'll -- I'm
13 not going to ask Mr. Monaghan about it.

14 MS. AMARANTE: Your Honor, MAACO objects to
15 them being admitting as exhibits even for purposes of
16 argument because no foundation has been laid, and they
17 clearly aren't relevant to the matter.

18 MR. BUKOWSKI: We didn't move for their
19 admission, Your Honor.

20 MS. AMARANTE: Okay. I'm just stating that
21 for the record.

22 THE COURT: You're concerned now? We've
23 deferred, I mean, consideration of these exhibits.

24 MS. AMARANTE: Well, counsel made a
25 reference to using them in argument, and I'm just

1 stating for the record that MAACO objects to that
2 because there's been no foundation laid for them so.

3 THE COURT: That's what I understood him in
4 saying it might be introduced later through another
5 witness. If it's introduced in argument, then you could
6 certain quarrel with it at that time. Let's not try to
7 deal with issues prematurely.

8 MR. BUKOWSKI: Your Honor, we do move for
9 admissions of Defendants's exhibits 1 and 2 at this
10 time.

11 THE COURT: I don't hear any objection to.

12 MS. AMARANTE: No objection, Your Honor.

13 (Whereupon, Defendants's Exhibit Nos. 1 and 2
14 were admitted into evidence.)

15 MR. BUKOWSKI: And with this, we conclude
16 our cross-examination of Mr. Monaghan.

17 THE COURT: All right. Any redirect?

18 MS. AMARANTE: No, Your Honor.

19 THE COURT: Mr. Monaghan, you have released.

20 THE WITNESS: According to protocol, do I
21 take all this paperwork with me or do I leave this here?

22 MS. AMARANTE: No, Mr. Monaghan, please
23 leave it.

24 THE WITNESS: Okay. Thank you, Your Honor.

25 (Witness excused.)

1 MS. AMARANTE: Your Honor, MAACO Franchising
2 calls Dianna Dieciedue to the stand.

3 DIANNA DIECIEDUE, WITNESS, SWORN.

4 COURTROOM CLERK: Please state your full
5 name and spell your last name for the record.

6 THE WITNESS: Dianna Dieciedue.

7 COURTROOM CLERK: Please spell your last
8 name.

9 THE WITNESS: D-I-E-C-I-E-D-U-E.

10 THE COURT: You have more wonderful vowels
11 in your name.

12 THE WITNESS: Yes, you can sing it.

13 DIRECT EXAMINATION

14 BY MS. AMARANTE:

15 Q. Good afternoon, Ms. Dieciedue. Where do you work
16 currently?

17 A. I work for American Drive Lines, Amoco
18 Transmissions.

19 Q. Okay. And where did you work before that?

20 A. MAACO Franchising.

21 Q. How many years did you work for MAACO?

22 A. Approximately 27 years.

23 Q. And what was your last position with the company?

24 A. I was its vice president of licensing.

25 Q. How many years did you hold that title?

1 A. About 13.

2 Q. And what were your job responsibilities generally
3 as vice president of licensing?

4 A. I over saw the credit and collections department,
5 statistical department, auditing, and I handled
6 compliance under the franchise agreement with the
7 franchisees, noncompliance matters.

8 Q. And when did you stop working for MAACO?

9 A. July 1st of 2009.

10 Q. And what was the reason that you stopped working
11 for MAACO at that time?

12 A. The company had been purchased and the synergies
13 that existed, my position was eliminated.

14 Q. Okay. In your role as vice president of
15 licensing, did you have any interactions with Mr.
16 Augustin?

17 A. Yes.

18 Q. And did MAACO ever audit the Augustins's MAACO
19 center?

20 A. Yes.

21 Q. What is the purpose of an audit in the MAACO
22 system?

23 A. To ensure that a franchisee is accurately
24 reporting its business figures to MAACO.

25 Q. Okay.

1 MS. AMARANTE: I'm going to offer as
2 Plaintiff's Exhibit 16 a document, which is a letter
3 from Ms. Dieciedue, which is dated August 10th, 2004.

4 (Pause in proceedings.)

5 BY MS. AMARANTE:

6 Q. Is this document familiar to you?

7 A. Yes.

8 Q. Okay. And what is it?

9 A. It's a letter forwarding the detailed audit
10 summary prepared by our auditor to the Augustins.

11 Q. Okay. And to the best of your knowledge, is the
12 information contained in the audit summary true and
13 accurate?

14 A. Yes.

15 Q. Okay. And what were the results of this audit
16 shown in Plaintiff's Exhibit 16?

17 MR. BUKOWSKI: Your Honor, I object to the
18 hearsay nature of the testimony and this document.

19 THE COURT: Perhaps the (indiscernible) was
20 how it was developed, materials like this arise.

21 MS. AMARANTE: Okay.

22 BY MS. AMARANTE:

23 Q. Ms. Dieciedue, who created this document which is
24 the audit summary, Plaintiff's 16?

25 A. MAACO's auditor.

1 Q. Okay. And who is MAACO's auditor?

2 A. I'd have to see. I'd have to see at this point
3 who it was. I think this one was prepared by, I
4 believe, Kevin Williamson, I believe.

5 Q. And is Mr. Williamson an employee of MAACO at the
6 time that he created this document?

7 A. Yes.

8 Q. And is conducting audits and creating audit
9 summaries part of Mr. Williamson's job responsibilities
10 for MAACO?

11 A. Yes.

12 Q. And are these figures and documents things that
13 MAACO keeps in the ordinary course of business?

14 A. Yes.

15 Q. And does the cover letter of Plaintiff's
16 Exhibit 16, is that your signature on the document?

17 A. Yes.

18 Q. Okay. And does the cover letter summarize what
19 Mr. Williamson's findings were with respect to the audit
20 of the Augustins's MAACO center?

21 A. Yes.

22 Q. And does that cover letter make a conclusion that
23 past due royalties are owed?

24 A. Yes.

25 MS. AMARANTE: I'm now going to offer as

1 Plaintiff's Exhibit 17, a letter from Ms. Dieciedue
2 dated August 17th, 2006.

3 MR. BUKOWSKI: Your Honor, I don't know that
4 Exhibit 16 was resolved.

5 THE COURT: What happened to 16?

6 MS. AMARANTE: Well, 17 is similar, and I
7 was going to go through them together and then offer
8 them both as exhibits. I can do 16 now, if you'd like,
9 Your Honor.

10 THE COURT: All right.

11 MS. AMARANTE: I'd offer it as a full
12 exhibit based on the witness's testimony that the
13 information --

14 THE COURT: All right. Go ahead and do it
15 your way. I just wanted to make sure we didn't overlook
16 16.

17 MS. AMARANTE: Okay.

18 (Pause in proceedings.)

19 BY MS. AMARANTE:

20 Q. Is this document familiar to you?

21 A. Yes.

22 Q. Okay. And what is it?

23 A. It's a letter from me dated August 17th, 2006, to
24 the Augustins regarding the results of another audit
25 that was done at the center.

1 Q. And was this audit also conducted by a MAACO
2 Franchising employee?

3 A. Yes.

4 Q. And does your cover letter to the Augustins
5 indicate that royalties are due according to the
6 auditor's findings?

7 A. Yes.

8 Q. And are these audit documents business records
9 that MAACO keeps in the ordinary course of its business?

10 A. Yes.

11 MS. AMARANTE: Your Honor, I would offer
12 Plaintiff's Exhibits 16 and 17 as full exhibits.

13 MR. BUKOWSKI: Your Honor, again, we object
14 to the hearsay nature of these. They're hearsay within
15 hearsay. To the extent the audit reports themselves are
16 being offered for the truth of the matter asserted, the
17 auditor is not subject to cross-examination and the
18 letters basically, as the witness has testified, restate
19 the conclusion presumably for the truth of the matter
20 asserted which, getting to my last objection, is the
21 relevance of these documents to the extent at which
22 they're not relevant, to the extent they're not the
23 basis for the termination at issue in this lawsuit.

24 THE COURT: Well, I think they are
25 admissible as entries in the regular course of business,

1 and I'll admit them. But the truth of what they report.

2 (Whereupon, Plaintiff's Exhibit Nos. 16 and
3 17 were admitted into evidence.)

4 BY MS. AMARANTE:

5 Q. Ms. Dieciedue, I'll asking you to look at
6 Plaintiff's Exhibit 15 which has already been marked.
7 It's the December 3rd, 2008, notice of default addressed
8 to the Augustins, and it should be in the pile of papers
9 there.

10 A. (Witness complies.)

11 Q. Is this document familiar to you?

12 A. Yes.

13 Q. And on the second page, is that your signature on
14 the letter?

15 A. Yes.

16 Q. Why did you send this notice of default to the
17 Augustins?

18 A. Because the Augustins had failed to pay royalty
19 fees and advertising contributions as they're required
20 to do so under the franchise agreement.

21 Q. Under the calculation of the amount due, there's
22 a paragraph that talks about the Augustins's failure to
23 submit weekly gross receipt reports for various weeks.
24 Do you see that?

25 A. Yes.

1 Q. Approximately how many weeks worth of weekly
2 reports had the Augustins failed to submit according to
3 this notice of default?

4 A. Ten reports.

5 Q. Okay. And under the franchise agreement, are the
6 weekly reports -- how often -- strike that.

7 Under the franchise agreement, how often are the
8 weekly reports supposed to be submitted?

9 A. The reports are due on Friday following the
10 preceding week's business.

11 Q. Okay. In the notice of default, the total amount
12 due is calculated at approximately \$59,000; is that
13 correct?

14 A. Correct.

15 Q. Would the gross receipts that the Augustins
16 received for those ten weeks of weekly reports that were
17 missing have been included in those royalty calculations
18 of \$59,000?

19 A. No.

20 Q. And why is that?

21 A. Because those figures were only known by the
22 Augustins.

23 Q. Okay. So if the Augustins had submitted those
24 ten weeks worth of weekly reports of their gross
25 receipt, would the amount due under this notice of

1 default have been different?

2 A. Yes. If they didn't pay those fees that they
3 reported, yes.

4 Q. Okay. And how would it have been different?

5 Would it have been higher?

6 A. Higher.

7 MS. AMARANTE: I'm going to offer as
8 Plaintiff's Exhibit 18, a response to notice of default
9 dated December 16th, 2008.

10 BY MS. AMARANTE:

11 Q. Do you recognize this document?

12 A. Yes.

13 Q. Okay. And did you receive it on or about
14 December 16th, 2008?

15 A. Yes.

16 Q. And is it -- who sent you this letter?

17 A. Philippe Augustin.

18 Q. In the second paragraph, can you please read into
19 the record the first two sentences of that paragraph
20 starting with, "I agree that I owe."

21 A. "I agree that I owe \$7,749.84 in advertising
22 expenditures and paint and supplies totalling \$1,135.96.
23 I am also acknowledging that these figures may have
24 increased since December 3rd and am willing to pay what
25 is owed pertaining to these two categories."

1 Q. So was Mr. Augustin disputing that he owed MAACO
2 anything at all or was it just the amount what was due
3 that was disputed?

4 A. I'm sorry. Can you ask me that again?

5 Q. I'm sorry. Let me rephrase.

6 So when you received this letter, did you
7 understand that Mr. Augustin was disputing the fact that
8 he owed anything to MAACO at all?

9 A. I was aware of the fact that he acknowledged all
10 the monies for advertising, all the monies for paint and
11 supplies. He had some concerns about the franchise
12 fees.

13 Q. Did you have any discussions with Mr. Augustin
14 following this letter regarding his concern about the
15 franchise royalty fees?

16 A. As I recall, we had a telephone conversation.

17 Q. What do you recall about that conversation?

18 A. He talked about his center not being certified.
19 He talked about concerns with regard to the audit. I
20 believe, if I'm not mistaken, the auditor may have even
21 explained to him that you had to pay franchise fees on
22 sublet work as well.

23 Q. Okay. Did you ever tell Mr. Augustin not to
24 worry about the notice of default?

25 A. No.

1 Q. What did you tell him about the actions that he
2 should take in response to the December 3rd notice of
3 default?

4 A. As the notice stated, he had 15 days to cure by
5 either paying all the amounts or enter into satisfactory
6 payment arrangement. And if he failed to do that, MAACO
7 could, if it elected to, terminate his franchise
8 agreement.

9 Q. Okay.

10 MS. AMARANTE: Absent objection, I'm going
11 to move for admission of Plaintiff's Exhibit 18 as a
12 full exhibit.

13 MR. BUKOWSKI: No objection, Your Honor.

14 (Whereupon, Plaintiff's Exhibit No. 18 was
15 admitted into evidence.)

16 MS. AMARANTE: Okay. I'm now going to mark
17 Plaintiff's Exhibit 19, which is a supplemental notice
18 of default dated March 4th.

19 (Whereupon, Plaintiff's Exhibit No. 19 was
20 marked for identification.)

21 BY MS. AMARANTE:

22 Q. Are you familiar with this document?

23 A. Yes.

24 Q. And on the second page, is that your signature
25 sending this letter to the Augustins?

1 A. Yes.

2 Q. Can you please read the text of the second
3 paragraph into the record, please, starting with, "After
4 you receive the notice."

5 A. "After you received the notice, I advised
6 Philippe that you were required to submit your weekly
7 gross receipts reports, royalty fees, and advertising
8 contributions on a current basis as a first step to
9 curing your defaults under the franchise agreement."

10 Q. Okay. And according to the supplemental notice
11 of default, had the Augustins complied with that request
12 to maintain current and submit the weekly reports as
13 required?

14 A. No.

15 Q. Okay. And what had happened to the total amount
16 due and owing since the December 3rd notice of default?
17 Had the number increased?

18 A. It had increased to -- by over \$15,000.

19 Q. Okay. Making --

20 A. Plus -- I'm sorry. \$15,000 plus there were more
21 missing reports, so I wasn't aware of what was owed on
22 those reports.

23 Q. Okay. And as you'll see in the last paragraph of
24 the first page, how many weekly reports are missing from
25 the Augustins at this point according to this

1 supplemental notice of default?

2 A. Twelve.

3 Q. Okay. Did you have any conversations with Mr.
4 Augustin following this supplemental notice of default?

5 A. I -- I vaguely recall one conversation because I
6 believe that was the conversation where I informed
7 Philippe how serious the notice of default was and that
8 he had to be concerned about, and he had to cure it or
9 again we could elect to terminate his franchise
10 agreement.

11 MS. AMARANTE: Your Honor, I'd move for
12 admission of Plaintiff's Exhibit 19 as a full exhibit.

13 MR. BUKOWSKI: No objection, Your Honor.

14 THE COURT: All right. We'll put it in.

15 (Whereupon, Plaintiff's Exhibit No. 19 was
16 admitted into evidence.)

17 BY MS. AMARANTE:

18 Q. Okay. And the notice of termination which is
19 dated April 9th, 2009, is already marked as Plaintiff's
20 Exhibit 7. You should have it in the stack up there.
21 Can you turn to that now?

22 A. I have it.

23 Q. Okay. Did you also send this letter to the
24 Augustins?

25 A. Yes.

1 Q. Okay. And looking at the amount due on page 2,
2 had those amounts again increased since the supplemental
3 notice of default?

4 A. Yes.

5 Q. And the last paragraph of page 2, according to
6 the notice of termination, had the Augustins come
7 current on their weekly gross receipts reports?

8 A. No.

9 Q. Did your letter remind the Augustins of the post
10 termination covenants in the franchise agreement?

11 A. Yes.

12 Q. And why did it do that?

13 A. Because the termination was effective April 9th,
14 and I wanted to ensure that he was aware of what he had
15 to comply with immediately.

16 Q. Did you ever tell Mr. Augustin that he didn't
17 need to worry about the notices of default?

18 A. Absolutely not.

19 Q. What did you tell him about the notices of
20 default?

21 A. That they were serious, that he -- if he didn't
22 cure satisfactorily, MAACO could terminate his franchise
23 agreement.

24 Q. Okay. And based on your 27 years of experience
25 with MAACO, what harm does MAACO suffer if after

1 termination a franchisee does not comply with the post
2 termination covenants?

3 A. Well, first of all, it's not fair to any other
4 MAACOs in his market if he continues to operate a MAACO
5 without being authorized to do so. They pay fees to
6 operate as a MAACO. He didn't.

7 It also would lessen that value of that covenant
8 not to compete if we just let people continue to compete
9 in that market when they were terminated. They also,
10 when they came to us, knew that we would require that
11 when we negotiated to enter into a franchise agreement
12 with them.

13 MS. AMARANTE: Thank you. No further
14 questions.

15 (Pause in proceedings.)

16 THE COURT: I'm sorry. Were you waiting for
17 me?

18 MR. BUKOWSKI: I was.

19 THE COURT: I beg your pardon.

20 MR. BUKOWSKI: No problem. I just didn't
21 want to start if you were making notes, Your Honor. I
22 apologize for the delay.

23 CROSS-EXAMINATION

24 BY MR. BUKOWSKI:

25 Q. Ms. Dieciedue, Exhibit 18 is the letter that Mr.

1 Augustin sent to you in response to your initial notice
2 of default, right?

3 A. Yes.

4 Q. Okay. Do you have that in front of you?

5 A. Yes.

6 Q. Okay. Can you turn to the last -- the second
7 page of that letter.

8 A. (Witness complies.)

9 Q. In the second paragraph from the bottom Mr.
10 Augustin states, "On behalf of MAACO Enterprises, you're
11 pursuing me for money that you feel that I owe, but what
12 about monies that MAACO Enterprises owes me and its
13 breached contractual obligations? When I moved from
14 Boston to West Palm Beach because MAACO failed to find
15 me a location at the Boston area, I was told by Bill
16 Chafey (ph.) that I will be reimbursed for moving
17 expenses. I was never compensated. That remains
18 outstanding. Also MAACO Enterprises has an old
19 compressor in my shop for years and owes me for storage.
20 I've been trying to get certified by a MAACO and the
21 person that was scheduled to certify me quit his job and
22 MAACO Enterprises did not send anybody else out to
23 certify me. Doug Engle is aware of this. Because I'm
24 not MAACO certified, I missed out on quite a few jobs.
25 In addition, I was told I would get a MAACO sign that

1 which lights up. I'm still waiting for such." Did I
2 read that paragraph correctly?

3 A. Yes.

4 Q. The next paragraph states, "Overall, I do not
5 feel that I've been treated very well by MAACO
6 Enterprises. I have to fight to get MAACO Enterprises
7 to honor certain obligations. The only individuals at
8 MAACO Enterprises that I had good conversations with is
9 the late Tony Martino, Grace and Jane in finance. I
10 want to work with representatives of MAACO Enterprises
11 to build a better business relationship and get the New
12 Year off to a good start. Please have the person with
13 whom I need to negotiate payment arrangements contact me
14 at (561) 845-2228 to work out a payment plan for monies
15 owed. I would greatly appreciate your addressing in
16 writing my concerns as identified above. Specifically,
17 about the known royalty fees and MAACO's failed
18 obligations to me. Thank you for your time and
19 consideration. Happy holidays."

20 Did I read that paragraph correctly?

21 A. Yes.

22 Q. Now, Exhibit 19 is here marked forth supplemental
23 notice of default; is that right?

24 A. I don't know what number it is, but --

25 Q. Nineteen? Okay. That's how I have it marked.

1 A. Okay. I believe you.

2 Q. Do you have the March 4th --

3 THE COURT: Do you have the letter of
4 March 4th?

5 THE WITNESS: I have the March 4th letter.

6 MR. BUKOWSKI: Okay.

7 BY MR. BUKOWSKI:

8 Q. Nowhere in your March 4th, 2009, letter do you
9 address any of the concerns that I just read from Mr.
10 Augustins's December 16th, 2008, response to your first
11 notice of default; isn't that true?

12 A. Yes.

13 Q. Now, was there an economic downturn in 2008
14 or 2009? Would you agree with me that the economy went
15 south in 2008 and 2009?

16 A. We had economic problems, yes.

17 Q. And it wouldn't surprise you to realize that a
18 franchisee might have trouble paying its weekly
19 advertising commitment, its weekly royalty payments,
20 etcetera, would it?

21 A. No.

22 Q. And here Mr. Augustin in his letter is asking for
23 someone at MAACO to contact him to build a better
24 business relationship and negotiate payment
25 arrangements, right?

1 A. Yes, and I contacted him.

2 Q. You didn't negotiate payment arrangements, did
3 you?

4 A. Well, I attempted to, yes.

5 Q. Okay.

6 A. Yes.

7 Q. It doesn't say anything about payment
8 arrangements in your March 4th supplemental notice of
9 default, does it?

10 A. No. No, because --

11 Q. No. That answered my question.

12 A. No.

13 Q. Thank you.

14 A. No.

15 Q. How do you have exhibit -- Defendants's Exhibits
16 1 and 2? I said what it is. They're the e-mails -- the
17 February 18th and 19th e-mails.

18 MR. BUKOWSKI: Is there an exhibit sticker
19 on those? May I approach, Your Honor?

20 THE COURT: Please. Go ahead.

21 MR. BUKOWSKI: That's them.

22 THE WITNESS: These one?

23 MR. BUKOWSKI: Let me just make sure. Okay.
24 That's 1 and 2. Okay.

25 BY MR. BUKOWSKI:

1 Q. Now, in the e-mails that are marked Defendants's
2 Exhibit 1 and 2, those are dated February 18th and
3 February 19th, 2009; is that right?

4 A. Yes.

5 Q. So I'd say after Mr. Augustin sent his response
6 to your initial notice of default, right?

7 A. Yes.

8 Q. And it's before your March 4th supplemental
9 notice of default?

10 A. Yes.

11 Q. And in those e-mails you're talking about the
12 landlord evicting Mr. Augustin, right?

13 A. I'm talking about an operations person advising
14 me that the landlord might evict him.

15 Q. Okay. So someone in MAACO's operations
16 department advised you that the landlord was ready to
17 evict Mr. Augustin for not paying his rent; is that
18 right?

19 A. Yes.

20 Q. And you're asking whether you should hold off on
21 sending the supplemental notice of default, marked as
22 Plaintiff's Exhibit 19, right?

23 A. Yes.

24 Q. And the reason you're asking is because in your
25 mind if the landlord evicts him, you don't need a

1 supplemental notice of default. He'll be terminated as
2 a result of being evicted from the premise, right?

3 A. That's was the way I chose to do any job, yes.

4 Q. Okay.

5 MR. BUKOWSKI: Nothing further, Your Honor.

6 MS. AMARANTE: I have just a few questions
7 of redirect.

8 THE COURT: Go ahead. Go ahead.

9 REDIRECT EXAMINATION

10 BY MS. AMARANTE:

11 Q. Ms. Dieciedue, you were starting to explain how
12 you did go about trying to set up a payment arrangement
13 for Mr. Augustin after his December 16th, 2008, letter.
14 Can you further explain that?

15 A. As I would tell any franchisee that was in
16 default, the first step that you had to take was to pay
17 current, submit all your missing reports, and start to
18 submit your reports on a current basis with the fees due
19 on them and to pay your other obligations, advertising
20 contributions, paint supplies that you purchased, on a
21 current basis going forward so that debt would not grow.

22 Each time he got a default, that was my
23 conversation. He never -- he never paid current. It
24 just kept growing. Then I would tell him that after he
25 paid current for awhile, we would address something

1 structured, enter into a note, something, that I would
2 propose on his behalf to the board for approval once he
3 paid current.

4 Q. And did Mr. Augustin ever start submitting the
5 weekly reports on a timely basis and current -- paying
6 his current royalties?

7 A. No.

8 Q. With the economic downturn that we all
9 experienced at the end of 2008 and 2009 excuse Mr.
10 Augustin's failure to submit the weekly --

11 A. No.

12 Q. -- reports on a timely basis?

13 A. No.

14 Q. Did you have a conversation after the
15 December 16th, 2008, letter in which you tried to
16 address Mr. Augustin's concerns about his alleged unfair
17 treatment from MAACO?

18 A. Did I have a conversation?

19 Q. Yes.

20 A. Yes.

21 Q. And did you take any action to investigate his
22 claims by talking to anyone else within MAACO?

23 A. I believe that I talked about certification, his
24 concerns with operations. We talked about the audit.
25 We talked about sublet. We talked about the main reason

1 that he owed MAACO franchise fees from the audit was
2 that he reported work and when our auditor went to his
3 center, he never reported that he got paid for it. That
4 was the majority of the reason he owed so much money
5 under his audits.

6 Q. Let's look at Defendants's Exhibit 2, which is an
7 e-mail chain. There's an e-mail from you at the top,
8 Thursday, February 19th, 2009. Do you see that?

9 A. Yes.

10 Q. Let's look at the second -- the bottom of the
11 second page of that e-mail chain. You'll see an e-mail
12 from Frank Costello to you dated Wednesday,
13 February 18th, 2009, at 3:21 p.m. Do you see that?

14 A. Yes.

15 Q. And who is Frank Costello?

16 A. He was our vice president -- he is our vice
17 president of real estate.

18 Q. Okay. And Frank Costello was reporting to you
19 about conversations he had had with the Augustins's
20 landlord?

21 A. Yes.

22 Q. And do you see in the first bullet point it
23 says "LL," I assume that means landlord --

24 A. Yes.

25 Q. -- informed me that he was there today and that

1 there were 26 cars on the lot without invoices per
2 landlord and there are no signs of economic downturn in
3 this business as the franchisee is claiming to the
4 landlord." Do you see that?

5 A. Yes.

6 Q. Okay.

7 MS. AMARANTE: I have no further questions.

8 THE COURT: I take it no recross?

9 MR. BUKOWSKI: No recross, Your Honor.

10 THE COURT: Thank you very much.

11 (Witness excused.)

12 MS. AMARANTE: Your Honor, MAACO Franchising
13 calls Sheik Hyatt to the stand.

14 THE COURT: Okay. Good afternoon, sir.

15 SHEIK HYATT, WITNESS, SWORN.

16 COURTROOM CLERK: Please state your full
17 name, spell your last name for the record.

18 THE WITNESS: Sheik Hyatt. Last name
19 H-Y-A-T-T.

20 COURTROOM CLERK: Could you also spell your
21 first name, sir.

22 THE WITNESS: S-H-E-I-K.

23 DIRECT EXAMINATION

24 BY MS. AMARANTE:

25 Q. Good afternoon, Mr. Hyatt.

1 A. Good afternoon.

2 Q. Mr. Hyatt, are you aware that you're a defendant
3 in this case?

4 A. Yes.

5 Q. And do you have a lawyer representing you here?

6 A. No.

7 Q. Do you currently have employment?

8 A. No.

9 Q. When were you last employed?

10 A. I was last employed in January.

11 Q. And where did you work at that time?

12 A. I worked at Palm Beach Auto Paint and Collision.

13 Q. Before working at Palm Beach Auto, where did you
14 work?

15 A. I work at the MAACO center on 0804 Old Dixie
16 Highway.

17 Q. And is that Mr. Augustin's former MAACO center?

18 A. Yes, it is.

19 Q. And when you worked at Mr. Augustin's former
20 MAACO center, what were your job responsibilities there?

21 A. I was a painter, and I oversee a couple workers
22 in the back of the shop.

23 Q. Did you have any role in keeping the books or
24 records of that business?

25 A. Never.

1 Q. And did you have any role in managing the
2 day-to-day operations of the office at --

3 A. No, nothing in the office; strictly in the back
4 of the shop.

5 MS. AMARANTE: I'm going to mark as
6 Plaintiff's Exhibit 20 a declaration of Sheik Hyatt that
7 was filed with this Court on March 9th, 2010.

8 (Whereupon, Plaintiff's Exhibit No. 20 was
9 marked for identification.)

10 BY MS. AMARANTE:

11 Q. Mr. Hyatt, is this document familiar to you?

12 A. Yes, it is.

13 Q. Okay. And turning to page 8 of the declaration,
14 is that your signature at the top of page 8?

15 A. Yes, it is.

16 Q. Did you review this document before you signed
17 it?

18 A. No, I did not. Oh, this document?

19 Q. Yes.

20 A. Yes. Yes.

21 Q. Okay. Let me ask that again: Did you review
22 this declaration, Mr. Hyatt --

23 A. Yes.

24 Q. -- before you signed it?

25 A. Yes, I did. I'm sorry.

1 Q. And is everything in the declaration true and
2 accurate to the best of your knowledge?

3 A. To the best of my knowledge, yes.

4 Q. I'm going to asking you to turn to page 2.

5 MR. BUKOWSKI: Your Honor, before we get
6 into the substance of it, you know, we object to any
7 statements in this document coming into evidence as
8 hearsay. You know, this is clearly a prior out of
9 course statement by this witness who is here to testify
10 as to whatever counsel is asking him.

11 THE COURT: Well, since we have the witness
12 on the stand, I assume you could pursue directly by a
13 declaration of whatever may be pertinent recitals.

14 MS. AMARANTE: Again, Your Honor, I thought
15 it would be more efficient to do it this way. But, I
16 mean, the witness is here and subject to
17 cross-examination, so I thought working through the
18 declaration would be the most efficient way to get the
19 testimony.

20 THE COURT: Well --

21 MS. AMARANTE: If you'll prefer that I ask
22 him questions, I will.

23 BY MS. AMARANTE:

24 Q. Mr. Hyatt, at some point did you sign papers to
25 incorporate an entity known as Palm Beach Auto Painting

1 and Collision?

2 A. Yes, I did.

3 Q. Why did you sign those papers?

4 A. I signed those papers because Mr. Augustin asked
5 me to sign them.

6 Q. Okay. Who prepared the documents in order to
7 incorporate Palm Beach Auto?

8 A. I do not know who. I never seen who prepared the
9 documents. I was given to them by Mr. Philippe.

10 Q. Okay. And did Mr. Augustin tell you why he
11 wanted you to sign the documents to incorporate Palm
12 Beach Auto?

13 A. Because he wanted me to put the business in my
14 name.

15 Q. And did he tell you why the business needed to be
16 in your name as opposed to Mr. Augustin's name?

17 A. Well, he said that he was having some problems
18 with MAACO. I don't know at the time, but -- and he --
19 before -- the economy is very bad and before my
20 coworkers, we lose our job, it's -- he wants me to put
21 the business in his name -- in my name, I'm sorry, for
22 some reason.

23 And I asked him at the time if it was illegal
24 because I do not want myself involved with any problems,
25 and he told -- he quite assured me it was -- it wasn't

1 illegal or nothing I'm doing.

2 Q. Okay. When Mr. Augustin asked you to incorporate
3 Palm Beach Auto, was it your understanding that you
4 would actually own and operate that business?

5 A. No. It was my understanding that I would just
6 be -- just my name would be used. He is still the owner
7 of the business.

8 Q. Did you make any cash or capital investments into
9 Palm Beach Auto?

10 A. No, I did not.

11 Q. And did you manage the day-to-day business of
12 Palm Beach Auto?

13 A. No, I did not.

14 Q. Who did?

15 A. Mr. Augustin did.

16 (Pause in proceedings.)

17 Q. Mr. Hyatt, have you heard the name Alan Zangen?

18 A. Not before today.

19 Q. Do you know who Mr. Zangen is?

20 A. He's a lawyer representing Mr. Philippe, I think
21 it is --

22 Q. Okay.

23 A. -- in Palm Beach. I'm sorry. I don't know
24 what -- I know he's a liar. That's all I know actually.

25 Q. Okay.

1 MS. AMARANTE: And I'm going to ask if the
2 witness could please turn to Plaintiff's Exhibit 20,
3 which is the declaration. There's a document attached
4 that I wanted to ask him about, which I don't have in
5 the single form.

6 Is it appropriate, Your Honor, to ask him
7 about the exhibits to the declaration?

8 THE COURT: Sure.

9 MS. AMARANTE: Thank you, Your Honor.

10 BY MS. AMARANTE:

11 Q. So if you turn --

12 MR. BUKOWSKI: Your Honor -- I'm sorry. I
13 think she was about to identify the exhibit.

14 MS. AMARANTE: I am.

15 MR. BUKOWSKI: Okay.

16 BY MS. AMARANTE:

17 Q. On page 12 of 58, which appears at the top of the
18 document -- well, actually, excuse me.

19 It starts on page 10 of 58. It says, "Exhibit A"
20 and then there's some documents behind that tab.

21 A. Yeah.

22 Q. Okay. And if you look at the top right corner,
23 Mr. Hyatt, there's page numbers. If you go to page 14
24 of 58.

25 A. Yes.

1 Q. Is that your signature on the articles of
2 incorporation of Palm Beach Auto?

3 A. That's my signature.

4 Q. Okay. And going back two pages to page 12 of 58.

5 A. Yes.

6 Q. Do you see that there's a letter from Attorney
7 Zangen in transmitting those papers to the Florida
8 Secretary of State?

9 A. Yes, I see that.

10 Q. And did you ask Attorney Zangen to prepare these
11 papers to incorporate Palm Beach Auto in your name?

12 A. No, I did not.

13 Q. Have you ever met Attorney Zangen?

14 A. No, I never met him.

15 Q. And have you ever spoken with Attorney Zangen?

16 A. No, I never spoken to him.

17 Q. After you signed these papers, did you receive
18 any stock certificates showing your ownership of Palm
19 Beach Auto?

20 A. No, I did not.

21 Q. And did you ever receive any paperwork regarding
22 that corporation?

23 A. No, I did not.

24 MS. AMARANTE: I'm going to offer
25 Plaintiff's Exhibit 21, which is a commercial lease

1 agreement.

2 BY MS. AMARANTE:

3 Q. Do you recognize this, Mr. Hyatt?

4 A. Yes, I do.

5 Q. And turning to the last page of the document, is
6 that your signature on the line for lessee?

7 A. Yes, it is.

8 Q. Did you find this location for Palm Beach Auto to
9 open business?

10 A. No, I did not.

11 Q. Did you negotiate the lease with the landlord?

12 A. No, I did not.

13 Q. Did you pay the \$5,000 security deposit to the
14 landlord?

15 A. No, I did not.

16 Q. And do you know who it is that found the
17 location, negotiated the lease, and paid the security
18 deposit?

19 A. Mr. Augustin.

20 Q. Did you play any role in this lease agreement
21 other than signing it?

22 A. No, I did not.

23 Q. Looking at the front of the lease agreement, it's
24 dated June 24th, 2009; is that correct?

25 A. Yes, it is.

1 Q. And on that date, were you still working at Mr.
2 Augustin's former MAACO center located on Old Dixie
3 Highway?

4 A. Yes, I was.

5 Q. And if you recall, when did the business move
6 from the former MAACO location to this Newman Road
7 location?

8 A. I think it was towards the end of June, first of
9 July.

10 Q. Did you ever work in the office of Palm Beach
11 Auto?

12 A. No, I did not.

13 Q. Did you have access to the books and records of
14 Palm Beach Auto?

15 A. No, I did not.

16 Q. Who kept the books and records of Palm Beach
17 Auto?

18 A. Mr. Augustin.

19 Q. Who ran the day-to-day operations of Palm Beach
20 Auto?

21 A. Mr. Augustin.

22 Q. And what was your role in the business?

23 A. My role? I was a painter, and I would see Mr.
24 Augustin in the morning. He would tell me what to do,
25 and I would tell the guys in the back what to do.

1 That's it. And I paint the cars.

2 Q. Okay.

3 A. I do some things sometimes, different jobs.

4 Q. And did you receive payment for your services as
5 an employee of Palm Beach Auto?

6 A. Yes, I did.

7 Q. From your prospective, did Palm Beach Auto
8 operate any differently than the Augustins's former
9 MAACO center?

10 A. No, it did not.

11 Q. When Mr. Augustin moved the business to Newman
12 Road, did he bring any of the equipment or supplies from
13 the former MAACO center to the new location?

14 A. He brought some painting stuff and a frame
15 machine and a hoist that he used for work.

16 Q. Did Palm Beach Auto have computers in the office?

17 A. Yes, they did.

18 Q. And were those -- where did those computers come
19 from?

20 A. They came from MAACO also.

21 Q. When did you first learn that MAACO had sued the
22 Augustins over their involvement with Palm Beach Auto?

23 A. I think it was in the middle of January or
24 towards the end of December. I'm not too sure of the
25 date on that.

1 Q. All right. Do you recall how you learned that
2 fact?

3 A. Yes. My wife opened the mail and it was for me.
4 It was a FedEx envelope or something, and she was at the
5 shop and she opened the mail, and there was one for me
6 and one for Mr. Augustin. And she opened mine, and that
7 was what -- that was when I learned about what was going
8 on.

9 Q. Okay. And if you'll look at your declaration,
10 which was marked for identification as Plaintiff's
11 Exhibit 20, in the top right corner it'll say "page 44
12 of 58." There's a January 12th, 2010, letter to you.
13 Let me know when you're there.

14 A. Yes.

15 Q. Okay. Is this the letter that you received that
16 first alerted you to the situation with --

17 A. Yes, this was it.

18 Q. Okay. And prior to receiving this letter, did
19 you have any understanding of whether there was
20 litigation between MAACO and Mr. Augustin?

21 A. My thought was Mr. Augustin was suing MAACO;
22 that's what I understand on all this.

23 Q. And who told you that?

24 A. Mr. Augustin told me he was going to sue MAACO
25 also.

1 Q. And when you learned that MAACO had sued the
2 Augustins, did you take any action?

3 A. Yes. I asked Mr. Augustin about it, and he told
4 me don't worry, that his lawyer will take care of the
5 papers. MAACO is just trying to intimidate me. That's
6 -- that was the word that he used.

7 Q. Did you do anything with respect to your
8 employment --

9 A. Yes.

10 Q. -- and ownership at Palm Beach Auto?

11 A. Yeah. I give him my two weeks's notice.

12 Q. And why did you do that?

13 A. Because I didn't want to be doing something
14 that's against the law or something that would get
15 myself involved in trouble. I was never involved with
16 the law in the first place.

17 Q. Okay. And in the declaration that's been marked
18 for identification as Plaintiff's 20, if you'll turn to
19 Exhibit D, which is page 48 of 58.

20 A. Yeah.

21 Q. Do you recognize these documents that appear on
22 these pages?

23 A. No.

24 Q. Okay. Let me ask you to look at page 50 of 58.

25 A. Yes.

1 Q. Is that your signature on this document?

2 A. Yes, that's -- that's my signature.

3 Q. Why did you resign from Palm Beach Auto at this
4 time?

5 A. As I say, I didn't want nothing -- no trouble
6 with the law, so I -- I wanted to come clean with Palm
7 Beach Auto. I didn't want nothing to do with it anymore
8 once I learned the true fact of the -- some of it
9 anyways.

10 Q. And let's look in that same document at page 55
11 of 58, which is a Wachovia signature card.

12 A. Yes.

13 Q. Do you recognize that document?

14 A. Yes, I do.

15 Q. And how did this document get to be signed by
16 both you and Mr. Augustin?

17 A. When I left, I left on a Friday. Mr. Augustin
18 told me he wanted me to sign over the account. I said,
19 "Don't worry. I am not going to take nothing from you.
20 I believe in a higher authority." That was my exact
21 word to him.

22 "I will be back on Monday and I will sign all the
23 paper." I did go back on Monday. I signed -- and I
24 signed the paper. I went to the bank with him
25 personally, and I signed the account over.

1 Q. Okay. And prior to this, when the account was in
2 your name, did you have the -- did you have the
3 supervision of how the money was spent for Palm Beach
4 Auto?

5 A. I did not have any supervision. I've got -- all
6 I did was sign the checks.

7 Q. And who would ask you to sign the checks?

8 A. Mr. Augustin would ask me to sign five, six
9 checks at a time.

10 Q. And when you were signing them, did you always
11 know what the checks were for?

12 A. No, I did not always know what the checks were.

13 Q. Did you also contact MAACO's counsel in January
14 of 2010?

15 A. Yes. Because I was -- I wanted to know what
16 situation I was in, and so I called Mr. Dean and spoke
17 with him briefly.

18 Q. Okay. And why did you call MAACO's counsel at
19 that time?

20 A. Because I wanted to do the right thing. I don't
21 want to be in trouble for something that -- you know, I
22 didn't want to be in any trouble.

23 Q. Okay.

24 A. I want to do the right thing.

25 Q. Mr. Hyatt, do you know a man named Frank Samson?

1 A. I don't know him personally, but I don't know
2 he's Mr. Augustin's friend. He's always at the shop
3 with him.

4 Q. And to your knowledge, does Mr. Samson have any
5 experience in the automotive industry?

6 A. No, he does not.

7 Q. How do you know that?

8 A. Because I always -- I was the one that fixes his
9 car, and he said that a lot of times he don't know
10 nothing about cars.

11 Q. Did you know that Mr. Augustin signed an
12 agreement last week to sell his stock in Palm Beach Auto
13 to Mr. Samson?

14 A. No, because after I left, I did not talk to Mr.
15 Augustin anymore. That was it. I think I called him
16 once and that was it. I didn't speak to him.

17 MS. AMARANTE: I'm looking to offer
18 Plaintiff's Exhibit 22, which is a motion filed in this
19 case.

20 BY MS. AMARANTE:

21 Q. Mr. Hyatt, are you familiar with this document?

22 A. Yes, I am.

23 Q. Okay. And did you sign this document?

24 A. Yes, I did.

25 Q. And did you read it before you signed it?

1 A. Yes, I did.

2 Q. And you understand that in this motion, you're
3 agreeing to have a judgment and an injunction entered
4 against you in this case?

5 A. Yes.

6 Q. And why did you agree to that consent judgment
7 and injunction?

8 A. Because it was the right thing to do.

9 Q. Based on your involvement with Palm Beach Auto,
10 have you also had the possibility of suffering some tax
11 consequences?

12 A. I do not know that at this time because Mr.
13 Augustin, I asked him about the taxes, and he never give
14 me no papers or he never gave me nothing. He tell
15 me, "Don't worry. Don't worry." That's all. So I
16 don't know what's threatening on me right now.

17 Q. Okay. Do you know a man named Jerome Dear?

18 A. Yes, I do.

19 Q. Did Mr. Dear work with you at Palm Beach Auto?

20 THE COURT: Named what? I'm sorry.

21 MS. AMARANTE: Jerome Dear, D-E-A-R.

22 THE WITNESS: Yes, he did.

23 BY MS. AMARANTE:

24 Q. And what was his position at Palm Beach Auto?

25 A. He used to order parts and do a couple --

1 write -- print out estimates.

2 Q. Did Mr. Dear also work with you at Mr. Augustin's
3 former MAACO center?

4 A. Yes, he did.

5 Q. Okay. And based on your work experience with
6 Mr. Dear, do you believe that Mr. Dear's qualified to
7 operate Palm Beach Auto without assistance from Mr.
8 Augustin?

9 MR. BUKOWSKI: Objection.

10 THE WITNESS: Honestly, no.

11 MR. BUKOWSKI: Objection. Calls for
12 opinion; move to strike; lacks foundation.

13 THE COURT: A lot of foundation. No, I'll
14 allow it.

15 BY MS. AMARANTE:

16 Q. So I think you said, no, he's not. And why not?

17 A. He doesn't know nothing about a business.

18 Q. Mr. Hyatt, why did you come here to testify
19 today?

20 A. Because I want to stay out of trouble, and I
21 believe in keeping a straight path, and that's what I'm
22 on. I don't want to lead in no misdirection with the
23 law or with any, you know, do any injustice to anybody.

24 Q. And how did you get here from Florida to testify?

25 A. I drove.

1 Q. Who's paying for your travel expenses for that
2 trip?

3 A. MAACO has offered to pay, but I pay -- right now
4 I paid everything.

5 Q. Aside from reimbursing some expenses, has MAACO
6 paid you for your testimony here today?

7 A. Not a penny.

8 Q. And has everything in your testimony here today
9 been the truth?

10 A. Honestly true.

11 MS. AMARANTE: Thank you. No further
12 questions.

13 CROSS-EXAMINATION

14 BY MR. BUKOWSKI:

15 Q. Good afternoon, Mr. Hyatt.

16 A. Good afternoon.

17 Q. The motion for a stipulated consent judgment that
18 you signed, I think that was marked at Exhibit 22; do
19 you have that?

20 A. Yeah.

21 Q. Okay. As part of that consent judgment, if the
22 Court approves that, you would not have to pay MAACO any
23 money; isn't that right?

24 A. Yes.

25 Q. And that was part of the agreement you reached

1 with MAACO to get out of this lawsuit, correct?

2 A. I never gained anything from Palm Beach Auto
3 Painting, so -- and I -- I just want to distance myself
4 from that. That's all it is.

5 Q. I understand. But my question is: As part of
6 the agreement you made with MAACO, they would let you
7 out of the lawsuit and you wouldn't have to pay MAACO
8 any money; isn't that right?

9 A. Basically, that's what it's saying.

10 Q. Okay. Now, how long had you known Mr. Augustin?

11 A. Maybe about nine years, eight, nine years.

12 Q. And when did you first meet him?

13 A. When I went to get a job with him. I think it
14 was in 2003.

15 Q. Okay. And was he operating the MAACO franchise?

16 A. Yes, he was.

17 Q. Okay. And he employed you at that time?

18 A. Yes.

19 Q. As a painter?

20 A. Yes.

21 Q. Okay. And you didn't work in the office at the
22 MAACO franchise; is that right?

23 A. No, I didn't work in the office.

24 Q. Okay. And at some point, did your wife become
25 employed by Mr. Augustin?

1 A. No.

2 Q. She never did?

3 A. No, she didn't.

4 Q. Ever?

5 A. No. She was never employed. She came and help
6 him sometimes because I was there.

7 Q. Okay. What did she do for him?

8 A. She would order parts and stuff like that.

9 Q. Okay. Do you currently have a business in Ocala,
10 Florida?

11 A. Yes, sir.

12 Q. What is that business?

13 A. Auto service.

14 Q. And what do you do there?

15 A. I couldn't find a job, so I opened a little shop.

16 Q. And what do you do at that shop?

17 A. I do mechanical repairs.

18 Q. Okay. And do you do painting?

19 A. I don't have a spray booth as -- as -- in that
20 place right now so.

21 Q. Okay. Are you trained to do mechanical repairs?

22 A. Yes, I do.

23 Q. And did you obtain that training prior to ever
24 meeting Mr. Augustin?

25 A. What?

1 Q. When did you become trained to do auto mechanical
2 repairs?

3 A. I used to do a while for Mr. Augustin.

4 Q. Okay. Did you know how to do it before you met
5 Mr. Augustin?

6 A. Yes, I did.

7 Q. Okay. That's what I was asking.

8 A. Yeah.

9 Q. Okay. When did you first learn how to do that?

10 A. That, in Guyana, South America.

11 Q. Okay. At what age?

12 A. Maybe since I was 12.

13 Q. Okay. And how old are you today?

14 A. Forty-six.

15 Q. Okay. And you said you contacted MAACO's counsel
16 after finding out about the lawsuit; is that right?

17 A. Yeah.

18 Q. You didn't call me or Mr. Read, my associate, who
19 were representing Mr. Augustin; is that right?

20 A. Yeah.

21 Q. You did not?

22 A. I did not.

23 Q. Okay. Why not?

24 A. Because of the simple fact that I had no
25 paperwork with your name or nobody's name on it. I only

1 had the MAACO paper that I got.

2 Q. Okay. And did you ever consult with your own
3 attorney?

4 A. No, I never did.

5 Q. Okay.

6 A. Because I never thought I did nothing wrong.

7 Q. Okay. But, I mean, after you were going to
8 contact MAACO, you didn't have your own attorney?

9 A. No, I didn't get attorney.

10 Q. Okay. Now, I believe you testified that you did
11 not work in the office at the MAACO franchise, right?

12 A. Yeah.

13 Q. And you also did not work in the office at Palm
14 Beach Auto, right?

15 A. Yeah.

16 Q. But you said there were computers in the office
17 at --

18 A. Uh-uh.

19 Q. -- Palm Beach Auto that were from MAACO?

20 A. Yeah. The office you could walk by and see
21 everything. I mean, it's not -- you don't have to be a
22 scientist to know a computer.

23 And we help bring all the stuff over from Palm
24 Beach after -- from MAACO to Palm Beach Auto. I put it
25 in my van if you want to be exactly.

1 Q. And how much from your travel here today, how
2 much of expenses have you incurred?

3 A. I did not calculate it yet. I have some bills.
4 That's it. I did not calculate how much I spent at the
5 time.

6 Q. When did you leave Florida?

7 A. Monday.

8 Q. Okay. And you stayed in hotels along the way?

9 A. Yeah.

10 Q. Okay. Did you have meetings with MAACO's
11 attorneys?

12 A. Not -- no, not since I left Palm Beach. Not
13 since I was in Palm Beach, I didn't. All I did was
14 spoke to them over the phone until today.

15 Q. Okay. You didn't meet with them in person in
16 Florida?

17 A. No.

18 Q. You spoke to them on the phone?

19 A. Yeah.

20 Q. And then the first time you met them in person
21 was here today?

22 A. Here today.

23 Q. Okay. And who did you speak with on the
24 telephone?

25 A. Mr. Dean.

1 Q. Okay.

2 A. And I believe Erika was there, too.

3 Q. Okay. And how many phone calls did you have?

4 A. Maybe about three.

5 Q. And the declaration that she had showed you, did
6 they prepare all that paperwork and the consent judgment
7 for you to sign?

8 A. Yes, they did.

9 MR. BUKOWSKI: Okay. I have nothing
10 further, Your Honor.

11 THE COURT: All right.

12 MS. AMARANTE: Your Honor, I have one --

13 THE COURT: Any redirect?

14 MS. AMARANTE: I have one question of
15 redirect.

16 THE COURT: All right.

17 REDIRECT EXAMINATION

18 BY MS. AMARANTE:

19 Q. Mr. Hyatt, during the month of October, November,
20 December of 2009, did Mr. Bukowski or Mr. Read ever call
21 you to interview you and find out if you were the actual
22 owner and operator of Palm Beach Auto?

23 A. No, nobody did.

24 MS. AMARANTE: No further --

25 THE WITNESS: That's why I knew I didn't

1 know of them.

2 MS. AMARANTE: No further questions.

3 THE COURT: All right. Thank you, sir. You
4 may step down. Thank you very much for coming --

5 THE WITNESS: Thank you.

6 THE COURT: -- this long way to testify.

7 (Witness excused.)

8 THE COURT: All right. I'd like to
9 interrupt for about 30 seconds before we move to the
10 next witness to find out what I think is simply a
11 clerical discrepancy, but so that the record will not be
12 overly confused by it.

13 The articles of incorporation, pages 13 to
14 15 of 58, part of the materials attached to Mr. Hyatt's
15 declaration. The articles of incorporation, which he
16 signed on June 2nd, 2009, seems superficially not to fit
17 chronologically with Mr. Zangen's letter to the Florida
18 Secretary of State filing copies of the articles of
19 incorporation. If you look at that letter, which is
20 page 12 of 58, you'll see it bears the date June 2,
21 2008. I can only conclude that that letter was
22 typographically erroneous.

23 It'd be noted that the stamp of receipt by
24 the Secretary of State was June 4th, 2009, and of
25 course, fits with the signing of the articles of

1 incorporation, and every other date that's been
2 mentioned as far as I can tell is all addressed to June
3 of 2009.

4 I simply want to make clear that my
5 interpretation of the record leads me to conclude that
6 I'm sure the parties have no difficulty with us, I take
7 it. Leads me to the conclusion that Mr. Zangen did not
8 get the right date on his later.

9 MS. AMARANTE: Thank you, Your Honor. Yes,
10 we would be in agreement with that. It appears to be a
11 typographical error.

12 MR. BUKOWSKI: We would, too, Your Honor.

13 THE COURT: Good. Well, if you can agree on
14 that, maybe you're halfway to settlement.

15 MR. FOURNARIS: We've tried that, Your
16 Honor.

17 THE COURT: All right.

18 MS. AMARANTE: Are you ready for another
19 witness, Your Honor?

20 THE COURT: Yes, indeed.

21 MS. AMARANTE: Plaintiff calls --

22 THE COURT: Eager.

23 MS. AMARANTE: Yes. Plaintiff calls
24 Shereena Hyatt to the stand.

25 SHEREENA HYATT, WITNESS, SWORN.

4 THE WITNESS: Shereena Hyatt, last name
5 H-Y-A-T-T, first name, S-H-E-R-E-E-N-A.

6 DIRECT EXAMINATION

7 BY MS. AMARANTE:

8 Q. Thank you, Ms. Hyatt. I would first --

9 (Pause in proceedings.)

10 THE COURT: Go ahead.

11 MS. AMARANTE: Thank you, Your Honor. I'm
12 first going to mark as Plaintiff's Exhibit 23 a
13 declaration of the Shereena Hyatt.

14 (Whereupon, Plaintiff's Exhibit No. 23 was
15 marked for identification.)

16 BY MS. AMARANTE:

17 Q. Ms. Hyatt --

18 (Pause in proceedings.)

19 BY MS. AMARANTE:

20 Q. Ms. Hyatt, is this document familiar to you?

21 A. Yes, it is.

22 Q. And on the last page, on page 4, is that your
23 signature attesting to the document?

24 A. Yes, it is.

25 Q. Did you review this declaration before signing

1 it?

2 A. Yes, I did.

3 Q. And is everything in the declaration true and
4 accurate to the best of your knowledge?

5 A. Yes, it is.

6 Q. Have you ever been an employee of Palm Beach
7 Auto?

8 A. Officially, no.

9 Q. Did you have any role in that business?

10 A. Well, my husband was there. I had a lot of free
11 time and I would go over. And Philippe would ask me,
12 you know, to help him do certain tasks, but in at least
13 September of 2009, I became more frequent there.

14 Q. And why did you start going to Palm Beach Auto
15 early in September of 2009?

16 A. Because I was warned by Charles Agee (ph) and
17 Jerome Dear that I should be careful with Philippe
18 because he was going to ruin Sheik's name and everything
19 along with it.

20 Q. When you assisted -- did you occasional help out
21 in the office of Palm Beach Auto?

22 A. Yes.

23 Q. And when you assisted in the office, who asked
24 you to provide services?

25 A. Philippe did.

1 Q. What kinds of work would you do for Palm Beach
2 Auto in the office?

3 A. Well, I answered the phone, call -- call around
4 people to tell them that, you know, where we're located,
5 and if they want to consider us as their body shop of
6 choice.

7 Q. Okay.

8 A. Shredding of paperwork, things like that.

9 Q. Okay. And you mentioned making phone calls to
10 potential customers. Where did you find names and
11 addresses or phone numbers of people to call for that
12 task?

13 A. He provided me a list of names that -- paperwork
14 that he got from the city and also from customer from
15 the Polaris.

16 THE COURT: Customer for what?

17 THE WITNESS: From the Polaris.

18 THE COURT: Right.

19 THE WITNESS: The thing that MAACO uses.

20 THE COURT: Yes.

21 BY MS. AMARANTE:

22 Q. So were there computers operating in the office
23 of Palm Beach Auto?

24 A. Yes.

25 Q. And was MAACO's Polaris software operating on

1 those computers?

2 A. When you say operating, you mean to print
3 invoices and things like that or --

4 Q. Well, was it accessible on the computers of Palm
5 Beach Auto?

6 A. Yes.

7 Q. Okay. And did Mr. Augustin give you customer
8 lists from Polaris and ask you to call those customers?

9 A. Yes.

10 Q. What did you say to the former MAACO customers
11 when you were making these phone calls?

12 A. That we're no longer part of MAACO, that we have
13 moved and our new address is 1009 Newman Road, and our
14 phone number. And if they wish to use us to give us a
15 call.

16 Q. Okay. And who directed you to make those phone
17 calls?

18 A. Philippe.

19 Q. And did you tell customers that Palm Beach Auto
20 was formerly MAACO?

21 A. Yes.

22 Q. Did you also write letters to former MAACO
23 customers with that same information?

24 A. Yes.

25 Q. Can you estimate, sitting here today, how many

1 former MAACO customers you contacted either via letter
2 or telephone?

3 A. Well, we went through them alphabetically, and we
4 did A through Z. How many, I can't say.

5 Q. Okay. Did you call every former MAACO customers
6 that was in the Polaris database?

7 A. Yes. Some of them answered, some of them phone
8 numbers disconnected.

9 Q. Okay. You also mentioned as part of your tasks
10 for Palm Beach Auto, shredding documents. What kinds of
11 documents did you shred?

12 A. Invoices from MAACO customer, letters, bank
13 statements, whatever was there.

14 Q. Okay. And who asked you to shred those
15 documents?

16 A. Philippe did.

17 Q. Okay. And approximately when did Mr. Augustin
18 make that request?

19 A. I believe it was the second week in July.

20 Q. And can you estimate the number of documents that
21 you shredded at Mr. Augustin's request?

22 A. Well, I can't say by numbers, but they were in
23 little baskets, maybe 10 or 12 of them. Those post
24 office baskets.

25 Q. How long did it take you to shred all of those

1 documents?

2 A. About a week and a half.

3 THE COURT: A week and a half did you say?

4 THE WITNESS: Yes.

5 BY MS. AMARANTE:

6 Q. And can you describe the kinds of documents you
7 saw as you shredded them?

8 A. Like I said, it was the invoices, MAACO letters,
9 bank statements, lawyers's letters, things of such. I
10 mean, I didn't really read, but, you know, at a glance,
11 you can see what it is.

12 Q. And did the documents that you were shredding
13 appear to be business records from the Augustins's
14 former MAACO center?

15 A. They could.

16 MR. BUKOWSKI: Objection, leading.

17 THE WITNESS: It could be.

18 THE COURT: Yes.

19 BY MS. AMARANTE:

20 Q. Well, did you see the name "MAACO" on any of the
21 documents?

22 A. Yes.

23 Q. Did you see customer estimates?

24 A. Yes.

25 Q. With the MAACO name on them?

1 A. Yes.

2 Q. Do you recall seeing any bank statements in Mr.
3 Augustin's name?

4 A. Yes.

5 Q. From what bank, if you recall?

6 A. Wachovia and Ameriprise.

7 Q. Do you recall --

8 THE COURT: Wachovia. I'm sorry. What was
9 the second one? Bank of America?

10 THE WITNESS: No. It's America -- I'm
11 sorry. Ameriprise Financial.

12 BY MS. AMARANTE:

13 Q. Do you remember seeing what the approximate
14 balance was on the Ameriprise Financial bank statements?

15 A. Yes. That I did look at. It was like \$200,000
16 or something like that.

17 Q. And did you know at that time that the Augustins
18 owed MAACO more than a hundred thousand dollars that
19 they were refusing to pay?

20 A. No, I did not.

21 Q. How did you get here from Florida to testify
22 today?

23 A. We drove.

24 Q. Okay. And I think your husband already testified
25 about some of those expenses. But aside from

1 reimbursing expenses, has MAACO paid you anything for
2 your testimony here today?

3 A. No, nothing.

4 Q. Why are you here to testify today?

5 A. Well, because number one, I don't think that my
6 husband did anything wrong. Number two, we just want to
7 do the right thing right now coming clear. And, you
8 know, just be free of all this.

9 Q. And has everything in your testimony here today
10 been the truth?

11 A. Yes.

12 Q. Thank you, Ms. Hyatt.

13 MS. AMARANTE: I have no further questions.

14 CROSS-EXAMINATION

15 BY MR. BUKOWSKI:

16 Q. Ms. Hyatt, when did you first meet Mr. Augustin?

17 A. 2004, May or June, sometime.

18 Q. 2004. Okay. Was Mr. Hyatt employed by Mr.
19 Augustin's business at that time?

20 A. Yes.

21 Q. At some point, did your children become employees
22 of Mr. Augustin's business?

23 A. My daughter worked at the front desk for Philippe
24 while she was in college.

25 Q. Okay. Is that it?

1 A. Yes.

2 Q. Okay.

3 A. My son did odd jobs for him for about a couple of
4 weeks.

5 Q. Okay. I think you said Mr. Augustin handed you
6 the list of people to call, right?

7 A. I don't believe that was the question. I said
8 who -- did she not say who told me to call?

9 Q. Who gave you the list?

10 A. Well, Mr. Augustin gave me a list of people to
11 call and also instructed me to use the Polaris several
12 times to call.

13 Q. Okay. Did you ever appear on a television
14 promotion and represent yourself as an executive
15 assistant at Phil's Auto Body?

16 A. Well, I didn't really represent myself. I was
17 pushed into that because none of them wanted to go on TV
18 and say it, and Mr. Fonger (ph.) just, you know, at that
19 moment I was put on the spot and --

20 Q. So the answer's yes?

21 A. Yes.

22 Q. Right?

23 A. Yes.

24 Q. Okay.

25 MR. BUKOWSKI: I have nothing further.

1 THE COURT: All right.

2 MS. AMARANTE: I have no redirect, Your
3 Honor.

4 THE COURT: Thank you, very much.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you for coming.

7 THE WITNESS: You're very welcome.

8 (Witness excused.)

9 MS. AMARANTE: Your Honor, MAACO Franchising
10 calls Doug Engle to the stand. And this will be our
11 last witness, Your Honor.

12 THE COURT: All right. Mr. Engle, welcome.

13 MR. ENGLE: Thank you.

14 DOUG ENGLE, WITNESS, SWORN.

15 COURTROOM CLERK: Please state your full
16 name, spell your last name for the record.

17 THE WITNESS: Douglas Engle, E-N-G-L-E.

18 COURTROOM CLERK: Plead be seated.

19 MR. FOURNARIS: Your Honor, pardon me.

20 There seems to be some confusion with the Hyatts as to
21 whether they can leave or whether they must stay.

22 THE COURT: Okay.

23 MR. FOURNARIS: And since they've traveled
24 so far, do you mind if I just clarify?

25 THE COURT: No, no. Not at all.

1 MR. FOURNARIS: Okay. You are free to
2 leave. The Court and the parties thank you for coming.
3 Please drive safely.

4 THE COURT: Thank you very much for coming.

5 MS. HYATT: You're very welcome. Thank you.

DIRECT EXAMINATION

7 | BY MS. AMARANTE:

8 Q. Good evening, Mr. Engle. Where do you work?

9 A. MAACO Franchising.

10 Q. And when did you start working for MAACO?

11 A. It started in February of 2005.

12 Q. What was your position and title at that time?

13 A. Regional director of operations for the southeast
14 region.

15 Q. And in broad strokes, what were your job
16 responsibilities in that position?

17 A. Supporting franchisees within an assigned
18 territories specially in the execution and
19 implementation of the operating system.

20 Q. Okay. Have you changed positions during your
21 employment with MAACO?

22 A. I have.

23 Q. What's your current position?

24 A. Assistant vice president of operations.

25 Q. And was that a promotion?

1 A. Yes.

2 Q. What are your responsibilities as assistant vice
3 president of operations?

4 A. Well, primarily growing the chain in terms of
5 store sales, but working in a -- in a supervisory
6 relationship with the regional directors of operations.

7 Q. Okay. And are you personal familiar with Mr.
8 Augustin?

9 A. I am.

10 Q. Okay. While you were regional director for the
11 southeast region, how frequently would you have contact
12 with Mr. Augustin?

13 A. Via the telephone maybe a couple times a month,
14 once or twice a month, and in his shop two to three
15 times a year.

16 Q. Okay. And was it part of your job
17 responsibilities as regional director to check in with
18 franchisees in Florida such as Mr. Augustin?

19 A. Yes.

20 Q. Okay. When you did have discussions with Mr.
21 Augustin, whether over the phone or in person, what
22 kinds of things would you discuss with him?

23 A. We talked a lot about certification, you know,
24 what he could do to become certified, and how that might
25 be able to, you know, help him grow sales, etcetera.

1 We had frequent conversations about, you know,
2 lack of reporting and, you know, urging him to submit
3 his numbers. Not necessarily that I would have been
4 involved from a credit and collections side, but as the
5 operations manager, the lack of sales data would make it
6 difficult for me to really engage him in any meaningful
7 conversation, so -- so I would urge him to report
8 figures, you know, even if he couldn't pay fees on those
9 figures just for the sake of us being able to have some
10 reasonably intelligent operational conversations.

11 Q. Okay. You mentioned certification. What does it
12 mean in the MAACO system to be certified?

13 A. It means that you are effectively following the
14 MAACO operating system. And it means that you are
15 achieving certain standards -- thank you -- in terms of
16 three criteria, and those criteria are: the quality of
17 work that you produce, the service that you provide, and
18 the image that you project.

19 Q. Okay.

20 THE COURT: May I interpose a question?

23 THE WITNESS: Typically not.

24 THE COURT: They don't.

25 MS. AMARANTE: I'm now going to mark --

1 THE COURT: There's no marketing effort of
2 any kind or advertising aspect that says this is a
3 certified MAACO place?

4 THE WITNESS: Not -- not from the retail
5 prospective. On our national fleet account side, it was
6 -- it was something that was a part of our national
7 fleet marketing for our larger accounts.

8 THE COURT: I see.

9 | BY MS. AMARANTE:

10 Q. And following up on that, Mr. Engle, is
11 certification a prerequisite in order for a franchisee
12 to be able to service a fleet account?

13 A. Certain ones, yes.

14 Q. Okay. And who makes the decision whether or not
15 it's a prerequisite for a particular fleet account?

16 A. The fleet account. Very few of those, by the
17 way. There might be three to five fleet accounts in the
18 entire system of hundreds that it's a strict requirement
19 to be certified.

20 Q. Okay. So franchisees who are not certified can
21 also potentially service fleet accounts; is that
22 correct?

23 A. Certainly.

24 Q. Okay. And does being certified guarantee that a
25 certain MAACO center will be able to service fleet

1 accounts?

2 A. No.

3 Q. Who makes the decision whether or not a
4 particular MAACO center is going to get business from a
5 fleet account?

6 A. The fleet account.

7 MS. AMARANTE: I'm now going to offer as
8 Plaintiff's Exhibit 24 a document which says, "The Path
9 to Certification" on the top. I've given a copy to
10 defense counsel. This is Exhibit 24.

11 BY MS. AMARANTE:

12 Q. Mr. Engle, is this document familiar to you?

13 A. Certainly.

14 Q. And what is it?

15 A. This is basically what we would call our
16 introduction kit to certification for a franchisee.
17 That explains all of the steps in terms of the process
18 upon which you use to go through and become certified as
19 well as all of the requirements associated with the
20 certification process.

21 Q. Okay. Did you explain the certification process
22 to Mr. Augustin?

23 A. Yes.

24 Q. And looking at the second page of the document,
25 which is Plaintiff's Exhibit 24, what does this document

1 show?

2 A. Some of the broad requirements from an imagine
3 service and equipment prospective that are required to
4 meet certification standards.

5 Q. Okay. And looking particularly under the heading
6 of service, the third line down, there's reference to
7 customer service response scores, average 92 percent or
8 greater during the last three months. Do you see that?

9 A. I do.

10 Q. What does that refer to, Mr. Engle?

11 A. It refers to our measurement for customer
12 satisfaction meaning customers at car delivery were
13 given a card upon which they would call to register
14 their warranty and answer a few questions.

15 There were two requirements for certification,
16 one being that a minimum of 15 percent of your customers
17 actually returned the card and then of those that
18 participated in the survey, 92 percent of them would
19 recommend you to a friend.

20 Q. Okay. And did you explain these criteria to Mr.
21 Augustin when he was discussing certification with you?

22 A. Yes.

23 Q. Okay. Did Mr. Augustin's center meet that
24 92 percent recommendation requirement that you just
25 discussed?

1 A. They didn't meet either of the two, the
2 15 percent or the 92.

3 Q. Okay. And did you discuss that as a requirement
4 that Mr. Augustin would need to fulfill for
5 certification?

6 A. Yes.

7 Q. And did you take any additional actions to help
8 the Augustins's MAACO center get certified?

9 A. Yes, on several occasions. The first time that
10 Mr. Augustin asked about certification was in about May
11 or June of '05, and then I forwarded this to him for our
12 review. I shared with him that while you're nowhere
13 near you need to be on the service side of the point
14 you're specifically talking about, while you're working
15 on improving that, I'll be happy to, you know, begin
16 working with you on the -- on the quality side in the
17 meantime in hopes that we could kind of, you know, do
18 those things concurrently.

19 Q. And did you evaluate the quality of the
20 workmanship in Mr. Augustin's MAACO center?

21 A. I did. Within about a month of that first phone
22 call, we did -- if -- if you would refer to the first
23 page of this document, number 4 is called the operations
24 benchmark visit. That's basically the operations
25 director's inspection to give feedback on where you

1 stand relative to certification.

2 Q. Okay.

3 THE COURT: I'm not sure that I see it.

4 MS. AMARANTE: I think on the first page,
5 the witness was referring to number 4 on the checklist.

6 THE COURT: Okay. Sorry. It's inside.

7 Right.

8 BY MS. AMARANTE:

9 Q. And Mr. Engle, when you performed those
10 operations benchmark visits and evaluations, what did
11 you find?

12 A. I found that the work needed improvement in
13 several categories that -- that we discussed.

14 Q. Okay. Do you recall sitting here today what some
15 of those categories needing improvement were?

16 A. Yeah. Other than the service one from -- from a
17 quality work prospective, it was primarily over spray
18 and dirt in the finish for overall paint jobs.

19 Q. Okay. And did you discuss those concerns with
20 Mr. Augustin?

21 A. Yes.

22 Q. Okay. How many times did you visit the
23 Augustins's MAACO center to do an operations benchmark
24 visit and evaluate the quality of his cars?

25 A. After this one, on two more occasions.

1 Q. And did you see improvement in the quality of the
2 work on each subsequent visit?

3 A. No.

4 Q. In your mind, was it a close call whether the
5 Augustins's MAACO center qualified for certification?

6 A. No. There was no effort. He -- he seemed to
7 think certification was simply a matter of asking for
8 it.

9 Q. And did you give Mr. Augustin feedback on how to
10 improve his chances of becoming certified?

11 A. Yes.

12 Q. And did he follow your advice?

13 A. No.

14 Q. Okay.

15 MS. AMARANTE: Your Honor, absent objection,
16 I'm going to move to have Plaintiff's Exhibit 24
17 admitted as a full exhibit.

18 MR. BUKOWSKI: I have no objection, Your
19 Honor.

20 THE COURT: All right.

21 (Whereupon, Plaintiff's Exhibit No. 24 was
22 admitted into evidence.)

23 MS. AMARANTE: And then I'd like to mark as
24 Plaintiff's Exhibit 25 an e-mail chain dated
25 December 3rd, 2007. And that will be --

1 (Whereupon, Plaintiff's Exhibit No. 25 was
2 marked for identification.)

3 BY MS. AMARANTE:

4 Q. Is this document familiar to you, Mr. Engle?

5 A. Yes.

6 Q. Okay. And you'll see in the middle of the first
7 page, there's an e-mail from you to Dianna Dieciedue
8 dated December 7th, 2007. Do you see that?

9 A. Yes.

10 Q. And do you recall writing this e-mail to Ms.
11 Dieciedue?

12 A. I -- I do.

13 Q. Okay. Why did you write this letter to Ms.
14 Dieciedue?

15 A. This was after Philippe alleging that operations
16 has done nothing to help him get certified, and I think
17 I clearly voiced my frustration here in bold as I just
18 did a moment ago that -- that he seemed to think
19 certification was -- was just simply asking for it and
20 put the responsibility on me to get him certified
21 instead of acknowledging that it was his responsibility
22 to -- to ultimately do what needed to be done.

23 Q. Okay. In all your interactions with Mr.

24 Augustin, did he ever tell you that he thought he had
25 not received adequate training from MAACO?

1 A. No.

2 Q. Did Mr. Augustin ever tell you that he was not
3 receiving adequate support from MAACO?

4 A. No.

5 Q. And if Mr. Augustin had had these concerns about
6 the level of training or support he was receiving, as
7 vice president -- as regional director, would you know
8 about those concerns?

9 A. I would have expected to be the person who was
10 told that, yes.

11 Q. Once Mr. Augustin received notices of default
12 from MAACO in 2008 and 2009, did MAACO give Mr. Augustin
13 an opportunity to sell the MAACO center before
14 termination?

15 A. Yes.

16 Q. And why was he given that opportunity?

17 A. From a franchisor prospective, it's always easier
18 to -- to -- to sell a store when it's still open. So
19 there's some benefit to us, but there's also benefit, of
20 course, to the -- to the franchisee to help them get out
21 with, you know, some financial stake.

22 Q. Do you have any information about the price that
23 Mr. Augustin was asking for his MAACO center?

24 A. We had several conversations on this subject,
25 yes.

1 Q. Okay. And what was the substance of those
2 conversations?

3 A. The first time he started at three fifty, and I
4 believe the lowest price he ever would consider was in
5 the two fifty range.

6 Q. What was your reaction to those asking prices for
7 the MAACO center?

8 A. That not only would the business not sell at that
9 price, no broker with any reasonable sense would even
10 bother to give you a lead at that price.

11 Q. Okay. And did you discuss the asking price with
12 Mr. Augustin?

13 A. Yes. My conversation with Philippe in that
14 regard would certainly not have been to tell him what he
15 should sell his business for. My conversation would be
16 at this point you are not going to get out of this
17 whole. You should think about getting out of this with
18 something other than nothing.

19 So I never talked specifically about a
20 recommended price, but I certainly mentioned the obvious
21 fact that any business that sells has to sell based upon
22 the strength of the profit and loss. And for a business
23 that on paper that is shown losing money, you're not
24 going to sell it for two fifty to three fifty. The only
25 way that's possible is with a cash buyer because no

1 financial institution would -- would lend you credit in
2 that regard.

3 So just in general, we had that conversation
4 that, you know, he needed to get a little more serious
5 about an asking price if he really wanted to sell the
6 center.

7 Q. Okay. And at some point, did MAACO provide Mr.
8 Augustin with the name of a potential buyer?

9 A. We did.

10 Q. Okay. And who was that potential buyer?

11 A. That was David Stefan.

12 Q. Okay. To your knowledge, did Mr. Stefan and Mr.
13 Augustin ever reach an agreement on a price for the sale
14 of the MAACO center?

15 A. No.

16 Q. And did you ever tell Mr. Augustin that he would
17 not be terminated because he was negotiating to
18 potentially sell the MAACO center to another franchisee?

19 A. No.

20 Q. Do you have any understanding as to why Mr.
21 Augustin and Mr. Stefan did not reach an agreement for
22 the sale of the MAACO center?

23 A. Because of the asking price.

24 MS. AMARANTE: Thank you, Mr. Engle. I have
25 no further questions.

CROSS-EXAMINATION

2 BY MR. BUKOWSKI:

3 Q. Mr. Engle, when was the last time you attempted
4 to certify or do an operations benchmark visit on Mr.
5 Augustin's franchise?

6 A. Myself personally?

7 Q. Yes.

8 A. Either late '06 or early '07.

9 Q. And did you personally only show up once to do
10 that?

11 A. No.

12 Q. Okay. But that was -- late '06 or '07 was the
13 last time you were there?

14 A. Was the last time.

15 Q. Okay. What was Mr. Bill Bass's position for
16 MAACO in the spring of 2009?

17 A. He was the regional director for the southeast.

18 Q. Okay. Well, had you moved up by that point?

19 A. I had moved up, and he had moved into my slot.

20 Q. Do you know when that occurred; when he moved
21 into that southeast director position?

22 A. I can't recall the exact date because he moved
23 from the California territory. No, I don't remember

24 Q. Okay. How much did MAACO charge David Stefan for
25 his franchise?

1 A. I don't know.

2 MR. BUKOWSKI: Okay. That's all I have.

3 THE COURT: All right.

4 MS. AMARANTE: One additional question, Your
5 Honor.

6 REDIRECT EXAMINATION

7 BY MS. AMARANTE:

8 Q. Mr. Engle, do you know if the price that MAACO
9 charged Mr. Stefan for the franchise included equipment
10 that was at the location of the former MAACO center?

11 A. I don't know.

12 Q. Okay.

13 MS. AMARANTE: No further questions.

14 THE COURT: All right. I take it you have
15 nothing further?

16 MR. BUKOWSKI: No, Your Honor.

17 THE COURT: Thank you, Mr. Engle. By
18 attrition you wound up as the briefest witness; eloquent
19 but brief.

20 MR. FOURNARIS: No one's complaining.

21 THE COURT: Well, I do understand that that
22 completes the plaintiff's case?

23 MS. AMARANTE: Yes, Your Honor.

24 THE COURT: All right. Well, I don't know
25 how far we can get tomorrow, but my understanding is you

1 have just one witness, do you?

2 MR. BUKOWSKI: Yes, Your Honor.

3 THE COURT: Mr. Augustin?

4 MR. BUKOWSKI: Yes.

5 THE COURT: Is Mrs. Augustin here or has she
6 left.

7 MR. BUKOWSKI: Yes, she is.

8 MR. FOURNARIS: Yes, she is.

9 THE COURT: Mrs. Augustin, how do you do?

10 MS. AUGUSTIN: Hi, how are you.

11 THE COURT: Hi. Well, we missed you last
12 time, but I'm glad you're here.

13 MS. AUGUSTIN: Thanks.

14 THE COURT: So we can meet tomorrow at 11:45
15 and that will be three quarters of an hour before lunch.
16 Things are -- I would like to think that that would
17 complete the testimony, but if it doesn't, we'll have
18 to -- we'll have to do some collaborative thinking about
19 when the testimony can be completed.

20 Is there some possibility that Mr.
21 Augustin's testimony could be completed in that short
22 time?

23 MR. BUKOWSKI: We will make every effort to
24 do that, Your Honor.

25 THE COURT: All right. Fine. Good. Every

1 effort is all that can be asked. All right.

2 Folks, we will recess until 11:45 and we
3 will be here in this courtroom. So if you want to leave
4 your materials here, feel free to do so.

5 MR. BUKOWSKI: Thank you, Your Honor.

6 MS. AMARANTE: Thank you, Your Honor.

7 (Proceedings concluded at 6:23 p.m.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

		I N D E X			
	PLAINTIFF'S WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
1	Thomas Monaghan				
2	By Ms. Amarante	4			
3	By Mr. Bukowski		71		
4	Dianna Dieciedue				
5	By Ms. Amarante	102			122
6	By Mr. Bukowski		116		
7	Sheik Hyatt				
8	By Ms. Amarante	125			149
9	By Mr. Bukowski		143		
10	Shereena Hyatt				
11	By Ms. Amarante	152			
12	By Mr. Bukowski		159		
13	Douglas Engle				
14	By Ms. Amarante	162			176
15	By Mr. Bukowski		175		
16		* * *			
17					
18					
19		<u>E X H I B I T S</u>			
20	<u>PLAINTIFF'S EXHIBITS</u>			<u>MARKED</u>	<u>ADMITTED</u>
21	P-1 - Assignment and Assumption of Franchise Agreement.....	6			7
22	P-2 - Franchise Agreement - 10/04/06.....	10			
23	P-3 - MAACO-Polaris 2000 Software Agreement.....	26			
24	P-4 - Training Class Memo.....	26			
25					

E X H I B I T S (cont'd)

	<u>PLAINTIFF'S EXHIBITS</u>	<u>MARKED</u>	<u>ADMITTED</u>
3	P-5 - Manual Receipt.....	28	
4	P-6 - Maintenance Manual.....	32	44
5	P-7 - Termination of Franchise Agreement - 04/09/09.....	40	42
6	P-8 - Final Judgment.....	44	
7	P-9 - LKQ Order Form.....	49	
8	P-10 - Palm Beach Auto Business Card.....	10	52
9	P-11 - Defendants' Joint Answer and Counterclaim (offered only)		
10	P-12 - Map.....	57	
11	P-13 - Security Agreement.....	67	
12	P-14 - Letter - 07/27/09.....	67	
13	P-15 - Notice of Default - 12/03/08		
14	P-16 - Letter - 08/10/04.....	108	
15	P-17 - Letter - 08/17/06.....	108	
16	P-18 - Response to Notice of Default - 12/03/08.....	112	
17	P-19 - Supplemental Notice of Default - 03/04/09.....	112	114
18	P-20 - Only Exhibits A, C, and E of the Declaration of Sheik Hyatt.....	127	
19	P-21 - Commercial Lease Agreement (offered only)		
20	P-22 - Motion (offered only)		
21	P-23 - Declaration of Shereena Hyatt.....	152	
22	P-24 - The Path to Certification.....	170	
23	P-25 - Email Chain - 12/03/07.....	171	

E X H I B I T S

	<u>DEFENDANT'S EXHIBITS</u>	<u>MARKED</u>	<u>ADMITTED</u>
2			
3	D-1 - Email Chain.....	91	101
4	D-2 - Email Chain.....	96	101
5	D-3 - Check.....	97	

* * *

CERTIFICATION

10 I, Laura A. Jimenez, do hereby certify that
11 the foregoing is a true and correct transcript from the
12 electronic sound recordings of the proceedings in the
13 above-captioned matter.

14

15

Date

Laura A. Jimenez

17

18

19

30

21

32

23

24

25